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TAXATION FOR A PRIVATE PURPOSE

THERE is a firmly established maxim of American constitutional law which asserts that taxes may not be levied by public authority for a private purpose. Since the enunciation of this principle by the Supreme Court of the United States in the well-known case of the Loan Association *v.* Topeka,[1] the impression has gone abroad that the right to be protected against the obligation to pay taxes levied for a private purpose is a right guaranteed by the federal Constitution, under the clause of the Fourteenth Amendment which prohibits the states from depriving a person of property without due process of law.[2] A careful scrutiny of the utterances of that court do not, however, justify any such conclusion. The Loan Association case, as well as the subsequent cases in which the doctrine of that case was reaffirmed,[3] came under the jurisdiction of the federal courts by reason of a diversity of citizenship in the parties to the suit. In not one of these cases was a federal question involved, and in not one of them was it intimated that this rule of law rested upon the general prohibitions of the Fourteenth Amendment. As late as 1904, Mr. Justice Holmes declared that nothing was decided by these cases except that "the constitutions of certain states did not authorize the taking of private property for private use."[4]

[1] 20 Wall. 655 (1874).

[2] McGehee, Due Process of Law, p. 228; Willoughby, Constitutional Law of the United States, p. 585.

[3] Parkersburg *v.* Brown, 106 U. S., 487 (1883); Cole *v.* La Grange, 113 U. S. 1 (1884).

[4] "I am not aware of any limitations in the Constitution of the United States upon

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The doctrine that private property cannot be taken for private

a state's power to condemn lands within its borders, except the requirement as to compensation. All that was decided in Loan Association *v.* Topeka, 20 Wall. 655, and Cole *v.* La Grange, 113 U. S. 1, was that the constitutions of certain states did not authorize the taking of private property for a private use. But if those decisions had been rested on the Fourteenth Amendment, which they were not, and in my opinion could not have been, I do not perceive that they have any bearing upon what I have said or upon the case at bar." Dissenting opinion of Holmes, J., with whom concurred Fuller, C. J., and Brewer and Peckham, J.J., in Traction Company *v.* Mining Company, 196 U. S. 239. In the majority opinion in this case it was not asserted that these earlier decisions had rested upon the Fourteenth Amendment; indeed, they seem to have been mentioned simply by way of a general introduction, having very obviously no bearing upon the issue of the case before the court.

See also, as bearing upon the interpretation put by the court itself upon the doctrine of the Loan Association case, the opinion of Mr. Justice Miller in Davidson *v.* New Orleans, 96 U. S. 97 (1877), where he declares that the taking of private property for public use without just compensation "may possibly violate some of those principles of general constitutional law, of which we could take jurisdiction if we were sitting in review of a circuit court of the United States, as we were in Loan Association *v.* Topeka." The dictum here expressed to the effect that just compensation in the exercise of the power of eminent domain is not required under the federal guarantee of due process of law was subsequently silently ignored by the court, and the principle was established that due process necessitates just compensation. Chicago, Burlington and Quincy Railroad Company *v.* Chicago, 166 U. S. 226 (1896). But the assertion that the doctrine of the Loan Association case rests upon the constitutions of the states and not upon that of the nation has never been repudiated. The nearest approach to such repudiation was the citation of the Loan Association case, among other cases, in support of a declaration made in the Missouri Pacific Railway Company *v.* Nebraska, 164 U. S. 403 (1896), to the effect that "the taking by a state of private property of one person or corporation, without the owner's consent, for the private use of another, is not due process of law, and is a violation of the Fourteenth Amendment." But the legislation under review in this latter case was not an exercise of the taxing power of the state; it approximated much more closely an exercise of the power of eminent domain; and it has been settled, as already indicated, that, in the exercise of the power of eminent domain, due process of law requires not only compensation but also that the property shall be taken for a public use. There is certainly some difference between the taking of land from A and vesting title to the same in B, and the taking of money from A, B, C, and D, in the form of taxes and giving the same to E in the form of a gift, although it may be admitted that the difference is in final analysis not very great. At any rate, the Supreme Court has declared (in the Missouri Pacific Railway case) that the former act is prohibited by the guarantee of due process of law, but it has not yet declared that the latter act is likewise comprehended in the federal prohibition.

Professor Corwin has declared that the reason why the Loan Association decision was not rested upon the Fourteenth Amendment was that, since the federal jurisdiction extended by reason of diversity of citizenship, there was no necessity for the assertion of a federal question and the establishment of a federal principle. "The Supreme Court and the Fourteenth Amendment," in *Michigan Law Review*, vol.

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use in the exercise of the power of eminent domain was laid down by the courts early in the nineteenth century. In most cases the argument in its ultimate crystalization was that the constitutional prohibition against the taking of private property *for public use* without just compensation operated by necessary implication to inhibit the taking of private property *for private use* with or without compensation.[1] It remained for the

vii, p. 655. The majority of the court has never had occasion to prove or disprove this assertion, but the opinion of four justices, uttered as above indicated in the Traction Company case thirty years after the decision of the Loan Association case, would seem to indicate the contrary.

[1] It is not to be inferred that the courts reached this conclusion with respect to the constitutional basis of the doctrine immediately and without circumlocution. The evolution of the doctrine in the courts of New York is, for example, highly instructive on this point. It seems to have been announced in that state first in the case of Gardner *v.* Newburgh, 2 Johns. Ch. 162 (1816), where Chancellor Kent promulgated the doctrine apparently on "general principles;" for at that time there was in the state constitution no specific provision in respect to the power of eminent domain. In applying the doctrine, however, the learned jurist did not go so far as to declare void the law in question; he simply read into it something which he held to have been "unintentionally" omitted. The New York constitution of 1821 contained a clause requiring compensation for property taken for public use. The significance of the implication of this clause, however, was not immediately grasped; for in 1831, in upholding the authority of the legislature to clothe a railway corporation with the power of eminent domain, it was declared that "to transfer the property from one individual to another, where there could be no pretence of benefit to the public by such exchange," would impair the obligation of contract (Beekman *v.* Saratoga and Schenectady Railroad Company, 3 Paige 45). Three years later a statute which gave to the city of New York the power to condemn property in excess of the amount actually needed for public use was declared invalid on the ground that "the constitution, by authorizing the appropriation of private property to public use, impliedly declares, that for any other use, private property shall not be taken from one and applied to the use of another. It is a violation of natural right, and if not in violation of the letter of the constitution, it is of its spirit, and cannot be supported." In the Matter of Albany Street, 11 Wend. 149 (1834). In this decision the court seemed to have found a fairly definite constitutional basis for the doctrine; but the next year it was declared in another court, in upholding the authority of the legislature to confer the power of eminent domain upon a railway corporation, that if this were not a public use it would be "an infringement of the spirit of the constitution; and, therefore, not within the general powers delegated by the people to the legislature." Varick *v.* Smith, 5 Paige 137 (1835). Two years later a similar enactment was sustained on the doctrine of the Beekman and the Varick cases, reference being made only to the "spirit of the constitution." Bloodgood *v.* Mohawk and Hudson Railroad Company, 18 Wend. 2 (1837). In 1839, however, the court once more sought a definite constitutional basis for the doctrine, reaffirming the Albany Street case, and declaring that a statute which gave to New York city the power to

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Supreme Court of the United States in comparatively recent times to transform this well-established principle of state constitutional law into one of the federal guarantees comprised in that due process of law which the Fourteenth Amendment secures to all persons against adverse state action.[1]

But the doctrine that private property cannot be taken for private use in the exercise of the power of taxation seems to have been put forward at a much later date than the first appearance of the doctrine with respect to the power of eminent domain. It is significant, for example, that when in 1837 the supreme court of Virginia was asked to declare void an act of the legislature empowering the city of Richmond, upon an affirmative vote of the people, to levy taxes for the purpose of investing heavily in the stock of a canal corporation, this doctrine was scarcely referred to with definiteness at all.[2] It is true that the court was requested to invalidate the act on the ground that it violated the first two articles of the bill of rights —articles which set forth in the customary general terms the inherent right of all men to "the enjoyment of life and liberty, with the means of acquiring and possessing property" and the doctrine that the people are the source of all power. But the opinion of the majority, speaking through Judge Tucker, did not advert to a constitutional principle of any kind. In a vigorous dissent Judge Brook declared that such legislation

would violate the sixth article of the bill of rights, by taking private

close certain streets and vested the title of the discontinued portions in fee in the city instead of the abutting property owners was void on the express ground that it violated that provision of the constitution which declared no person should be deprived of property without due process of law, nor private property be taken for public use without just compensation. From that time on the doctrine has been laid upon this specific implication of the constitution.

See also the early Tennessee case of Harding *v.* Goodlett, 3 Yerger 41 (1832), where the doctrine is rested upon a similar specific clause of the bill of rights (sec. 21). But see also Reynolds *v.* Reynolds, 15 Conn. 83, where as late as 1842, the court wholly upon technical grounds skilfully avoided determining whether a statute authorizing the laying out of a "private way" for one person across the lands of another, would be a taking of property for a private use.

[1] Chicago, Burlington and Quincy Railroad Company *v.* Chicago, 166 U. S. 226 (1896).

[2] Goddin *v.* Crump, 8 Leigh (Va.) 120 (1837).

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property for public purposes without compensation. It would violate natural justice, and be in conflict with the theory and the principles of the constitution. It would violate the fifteenth article of the bill of rights, which declares that no free government or the blessings of liberty can be preserved to any people, but by a firm adherence to justice, moderation and temperance, and by frequent recurrence to fundamental principles.

It is obvious, however, that the eminent judge was here groping almost blindly for some constitutional provision that would enable him to throw out of court an act the wisdom and policy of which he warmly disapproved. There was certainly no clear conception in his mind of a basic constitutional principle which affirmed that the power of taxation could be exercised only for a public purpose; and, indeed, his whole argument seemed to be founded rather upon the notion that the state legislature could not authorize a tax to be levied by a single municipal corporation for a general state purpose.

As a matter of fact, the first appearance of the doctrine of no taxation for a private purpose was probably in connection with the attacks which were made upon those innumerable statutes of the fifth, sixth and seventh decades of the nineteenth century which conferred upon local public corporations the authority to issue bonds, and in consequence to impose taxes, for the purpose of subscribing to the stock of, or making donations to, railway corporations. The earliest of the cases involving the validity of such a statute came before the courts in 1848; and while the practical significance of the legislation in question has long since become wholly a matter of historical interest, the evolution of the principle of law that was involved is a matter not only of interest but also of some practical importance in the present day. It would seem, therefore, that a brief review of that evolution may not be inappropriate.

The well-known case of Sharpless *v.* The Mayor of Philadelphia[1] was one of the earliest cases in which the validity of a subscription to railway stock was drawn into question.[2] So far

[1] 21 Penn. St. 147 (1853).

[2] The case of Nicol *v.* The Mayor of Nashville, 9 Humph. (Tenn.) 252, involving

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also as the decision of the case was concerned, sustaining as it did the constitutionality of such permissive legislation, it became a leading case for innumerable decisions in many jurisdictions. The legislation was attacked in the Sharpless case on the ground that this was a taking of private property for private use. Said Chief Justice Black, in one of the three opinions that were handed down by the members of the court:

> If this be so, it is palpably unconstitutional. Perhaps there is nothing in the books which shows the tenacity with which this court has adhered to the letter of the constitution in determining the extent of legislative power, more plainly than the doubt which was once entertained (10 Watts 63) whether the want of an express inhibition did not permit the Assembly to take one man's property and give it to another. The constitution *does* prohibit it. It is not within the general grant of legislative power. It would be a gross usurpation of judicial authority, and would violate the very words of Section XI, Art. IX.

The section of bill of rights here referred to by the learned judge guaranteed that every man "for an injury done him in his lands, goods, person, or reputation, shall have remedy by due course of law." His entirely reasonable interpretation was, like that of the federal Supreme Court at a later date,[1] that under due course (or process) of law the title to A's property could not be vested in B by any public act save the judgment of a court. But he went on to declare that the taking of property under the taxing power was a thing wholly apart from this. In other words, his conclusion was practically that the levying and collecting of taxes was not a "taking" of property; he did

a similar question, was decided in 1848. In this case, however, the doctrine of no taxation for a private purpose was not raised. The constitution declared that the General Assembly should have power to authorize the several counties and towns of the state to impose taxes "for county and corporate purposes;" and the court was asked to declare that a tax for the purchase of railway stock was not a "corporate purpose." The court declared that "the legislature most clearly has no power to delegate to a county or corporate town the power of levying taxes for any other than county or corporate purposes;" but in the opinion of the court the levy in question was for a corporate purpose.

[1] Missouri Pacific Railway Company *v.* Nebraska, 164 U. S. 403 (1896).

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not, therefore, discuss the question whether taxes could or could not be imposed for a private purpose.

In the Iowa case of Dubuque County *v.* The Dubuque and Pacific Railroad Company,[1] decided in the same year as the Sharpless case, a similar law was attacked upon similar grounds; but the court summarily dismissed the allegation, which was discussed at length in the dissent, with the declaration that "the constitution does not make the slightest allusion to any such restriction."

The question of the validity of legislation of this character in aid of railways first arose in New York in the case of Clark *v.* Rochester,[2] decided in the next highest court of the state (the supreme court) in 1856. In an elaborate opinion Judge Allen held that there were only two ways to take property, except by due process of law—one by the power of eminent domain, and the other by the power of taxation; that this was "not an attempt to take property by due process of law," for that "imports a suit instituted and conducted according to the present forms";[3] and that it was certainly not an exercise of the power of eminent domain but of taxation. He did not assert the general doctrine that the legislature cannot authorize the imposition of a tax for a private purpose, but he held, by a construction that was certainly overstrained, that the legislature was expressly forbidden to grant the power which the act assumed to confer, by reason of a specific provision of the constitution[4] which enjoined the legislature to restrict the financial powers of municipal corporations so as to prevent abuses. He said:

> In the duty enjoined to restrict the power of the municipal legislatures to tax the property, or loan the credit of cities and villages, there is, by a very plain and necessary implication, an absolute prohibition to enlarge their powers. A discretion is vested in the legislature as to the restriction, but none whatever in regard to the granting of new and enlarged powers in respect to taxation and the creation of debts.

[1] 4 Greene 1 (1853). [2] 13 How. Pr. 204 (1856).

[3] Note the narrow construction here given to this now elastic phrase.

[4] Constitution of 1846, art. viii., sec. 9.

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And he added that "without this effect, the provision is but an expression of opinion, a recommendation to the legislature" —which, of course, it was, and was intended to be.

On appeal to the appellate division of the supreme court the decision of the Clark case was reversed;[1] and in 1858, when the question as to the validity of a similar law was for the first time before the highest court of the state (the court of appeals) in the case of the Bank of Rome *v.* The Village of Rome,[2] that court not only ignored the somewhat attenuated argument for invalidity advanced in the Clark case, but likewise exhibited an extreme delicacy—not to say timidity—in even discussing the proposal that the legislature could not authorize a municipal corporation to levy tax for a private purpose. The opinion recited in part:

> The constitution does not limit the power of the legislature in terms, and if any limit is to be found by judicial investigation, the inquiries of a court must be directed to the general consideration of what, in their judgment, is wise and expedient. That this is a line of inquiry which courts cannot pursue, in determining upon the validity of a law, was maintained in Wynehamer *v.* The People (3 Kern. 378). Even if a court could properly enter upon this inquiry, no judge would, I think, venture to state a more restrictive rule, than that the powers conferred on a municipal corporation must relate to the public interests of the territory, or body of persons within its limits.

Pursuing this line of inquiry, which the learned judge admittedly regarded as of doubtful propriety, he reached the conclusion that the business of a railroad is a public business and that a subscription to the stock of a corporation engaged in such a business was an appropriation of money acquired by taxation for a public purpose.

It would be a pursuit of no material profit to follow the paths of judicial eloquence through the numerous cases that arose out of legislation authorizing municipal corporations to grant aid to

[1] 24 Barbour 446 (1857). See also Grant *v.* Courter, *ibid.* 232, and Benson *v.* Albany, *ibid.* 248, both cases overruling Clark *v.* Rochester as decided in the lower court.

[2] 18 N. Y. 38 (1858).

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railways—cases so numerous that by 1872 the Supreme Court of the United State declared the validity of such legislation to have been sustained by the highest courts of the state "in nearly a hundred decisions".[1] Enough has been said to indicate the manner in which the courts were first called upon to declare the doctrine that the power of taxation can be exercised only where the purpose is public. In these railway-aid cases the courts gradually drifted into a discussion of the public character of the railway business—a proposition which could be sustained without much difficulty. And in every such discussion there was an obvious, though often merely tacit, admission that somewhere in the law of our constitutions lay the principle that the power of taxation could not be exercised for a private purpose.

The vagueness of the basis of this principle was perhaps nowhere more eloquently voiced than in the almost astounding utterance of Mr. Justice Strong of the United States Supreme Court in the case of Olcott *v.* The Supervisors.[2] The case came up from a United States circuit court on review, federal jurisdiction having extended by reason of diversity of citizenship. A law of Wisconsin, authorizing any county, on an affirmative vote of the people, to make a donation to a railway, had been declared void by the supreme court of that state on the ground that while the legislature might authorize a subscription to the stock of the railway company, it might not authorize an out-and-out donation.[3] The Supreme Court was asked to follow the ruling of the state supreme court on this interpretation of the state constitution. In refusing to do so, Mr. Justice Strong declared:

> That Whiting *v.* Fond du Lac County was not a determination of any question of local law, is manifest. It was not claimed to have been that. . . . The meaning of no provisions of the state constitution was considered or declared. What was considered was the uses for which taxation generally, taxation by any government, might be authorized, and

[1] Railroad Company *v.* County of Otoe, 16 Wall. 667 (1872). In this estimate, however, Judge Strong included cases upholding the validity of statutes authorizing aid in the construction of turnpikes and canals also.

[2] 16 Wall. 678 (1872).

[3] *Infra*, p. 203, n. 4.

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particularly whether the construction and maintenance of a railroad, owned by a corporation, is a matter of public concern. It is asserted (what nobody doubts), that the taxing power of a state extends no farther than to raise money for a public use, as distinguished from private. . . . Now, whether a use is public or private is not a question of constitutional construction. It is a question of general law. It has as much reference to the constitution of any other state as it has to the State of Wisconsin. Its solution must be sought not in the decisions of any single state tribunal, but in general principles common to all courts. The nature of taxation, what uses are public and private, and the extent of unrestricted legislative power, are matters which, like questions of commercial law, no state court can conclusively determine for us. This consideration alone satisfies our minds that Whiting *v.* Fond du Lac County furnishes no rule which should control our judgment, though the case is undoubtedly entitled to great respect.

This is strange doctrine indeed. One may agree with the learned justice that the question of what is public and what is private is not a question of constitutional construction. It is a question of fact or opinion rather than a question of any law, general or otherwise. But the reason, if not indeed the excuse, for any judicial determination of this question, where a law is sought to be invalidated or sustained, must lie in some constitutional prohibition, state or national, real or imaginary. It is surely a new doctrine that "the extent of unrestricted legislative power" is a matter of general law, like commercial law, dependent upon the construction of neither state or national constitution, and that a statute may be declared void or upheld according as it violates or conforms to the principles of this "general law." To brush aside the main point at issue with the cavalier assertion that "nobody doubts" that the taxing power cannot be exercised for a private purpose is merely to beg the question. If nobody doubts this, it is certainly not because the courts have eliminated doubt by explaining or clarifying the constitutional foundation upon which the principle rests. To such unreasonable lengths as this did the courts allow themselves to drift in sustaining the railway-aid legislation that flourished in the middle of the century—sustaining such legislation over against a constitutional inhibition which, if it

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rested upon anything, was founded upon nothing more substantial than "general principles" or the "spirit of the constitution" or the yet unphrased "rule of reason."[1]

Another class of cases in which the principle of no taxation for a private purpose was invoked arose while the courts were still occupied with the railway-aid cases above referred to. These were the cases involving the authority of the legislature to confer upon municipal corporations power to grant military bounties to those who enlisted in the United States army as a part of the quota of their respective towns, cities and villages. Reference to opinions expressed in one or two of these cases will suffice to show that the public character of a tax levied for this purpose was discussed by the courts, as in the railway cases, without any effort to explain why it was constitutionally obligatory that the purpose of the tax should of necessity be public. Thus in the case of Speer *v.* The School Directors,[2] the court was content to dwell upon the public character of appropriations for military bounties and to conclude that "the purpose being clearly municipal, because of its public nature, and therefore within the authority to tax, the power to borrow was ancillary." Again in Booth *v.* Woodbury,[3] after discoursing at

[1] Among the other cases involving the validity of legislation of this character in which the courts expressly or impliedly admitted that taxation for a private purpose was invalid, but in which no constitutional basis for the doctrine was put forward, may be mentioned: Railroad Company *v.* County of Otoe, 16 Wall. 667 (1872); United States *v.* Railroad Company, 17 Wall. 322 (1872); Perry *v.* Keene, 56 N. H. 514 (1876); People *v.* Batchellor, 53 N. Y. 128 (1873); Duanesburgh *v.* Jenkins, 57 N. Y. 177 (1874). In this latter case, however, the court comes very near to asserting that no such principle exists, for after a review of previous cases the conclusion is made that "the substantial grounds of these decisions were, that the legislative power of the state was limited only by the restraints expressed in the constitution, and that none of these restraints were infringed by the legislation in question." See also Williams *v.* Duanesburgh, 66 N. Y. 129 (1876); Horton *v.* Thompson, 71 N. Y. 513 (1878); Whiting *v.* Sheboygan and Fond du Lac Railroad Company, 25 Wis. 167 (1870); State *v.* Wapello County, 13 Ia. 388 (1862). In the case last cited, as in later cases in this jurisdiction in which this decision was reaffirmed, the right not to be taxed for a private purpose was held to be one of those rights included in the saving clause of the bill of rights to the effect that "the enumeration of rights shall not be construed to impair or deny others retained by the people." See also McClure *v.* Owen, 26 Ia. 243 (1868) and Hanson *v.* Vernon, 27 Ia. 28 (1869).

[2] 50 Penn. St. 150 (1865).

[3] 32 Conn. 118 (1864).

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length upon the public benefits accruing from such expenditure, the court declared :

> The clause [of the state constitution] relied upon by the petitioners is that which inhibits the "taking of private property for public use without just compensation." But it is clear that the law in question was not passed in contravention of that clause of the constitution. The voters of the town did not contemplate the taking of any property within the meaning of that clause. . . . Exacting money by taxation and taking private property for public use, are different things. . . . The clause referred to has no bearing on the case.

Here the court merely gave voice to the very obvious distinction between the power of eminent domain and the power of taxation,[1] but the opinion nowhere refers to any constitutional provision which requires that the power of taxation shall be exercised only for a public purpose. That the court had any such principle of constitutional law in mind can only be inferred from the fact that the elaborate discussion of the public purpose of the law would otherwise manifestly have been superfluous. Again, in Massachusetts the power of the legislature to authorize municipal corporations to grant military bounties was sustained in several cases; but in this state, because of an unusual provision of the constitution, the court was doubtless fully justified in making inquiry in respect to the public purpose of the tax in question. The constitution, in connection with the grant of legislative power to the General Court, expressly authorized the legislature "to impose and levy proportional and reasonable assessments, rates and taxes . . . *for the public service*, in the necessary defence and support of the government." Here was a clause which would obviously enable the court to assert without undue violence to logical construction that the legislature was forbidden by reasonable implication from imposing a tax for other than a strictly public purpose. And in the case of Lowell *v.* Oliver,[2] in which the public character of a tax for military aid by municipal corporations was held to be clearly within both the letter and the spirit of the constitution, this was precisely the interpretation which the court put upon this pro-

[1] *Infra*, p. 198.

[2] 8 Allen (90 Mass.) 247 (1864).

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vision of the constitution. But a year later, in the case of Freeland *v.* Hastings,[1] in which it was declared that a tax levied for the reimbursement of persons who had voluntarily contributed to a fund for the purpose of procuring volunteers was valid, but that a tax levied for the reimbursement of persons who had procured substitutes for themselves by the payment of money was invalid, it is noteworthy that the court did not specifically refer to the clause of the constitution in question. On the contrary, a general declaration was made to the effect that a "statute designed to accomplish such purposes *would be against common right*, and would transcend the authority conferred on the legislature by the constitution." If the court had in mind the specific provision of the constitution in respect to the imposition of taxes, the opinion expressed failed to disclose this fact.

These few citations afford ample illustrations of the manner in which the courts, in these military bounty cases, proceeded without hesitation or explanation upon the general assumption that the principle of no taxation for a private purpose was an established principle of our constitutional law. Since the advent of the railway-aid and military-bounty cases, and especially since the year 1870, this principle has been expressly or impliedly avowed, as will be noted a little later, in a number of cases involving the validity of other kinds of legislation. In most of these cases the courts have been content to assert that the principle is "universally recognized" or that it is "well-established." Upon what constitutional basis it rests, they have signally omitted to declare.

In a few cases, however, some pretence of an implied constitutional basis has been sought. Thus there is occasional evidence that some of the courts have completely confounded the rules of law governing the exercise of the power of eminent domain with those governing the exercise of the power of taxation. This is especially true of the supreme court of Maine. In 1872 an act of the legislature authorizing a town to make a loan of $10,000 to a lumber company was declared void by that court upon the express ground that "the constitutional pro-

[1] 10 Allen (92 Mass.) 570 (1865).

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vision that 'private property shall not be taken for public use without just compensation, nor unless the public exigencies require it,' by necessary implication prohibits the taking of private property for private purposes by legislative action."[1] Practically identical with this is the argument of the United States Supreme Court in Cole *v.* La Grange:[2]

> It is true that this article regards the right of eminent domain and not the power of taxation; for the taking of property by taxation requires no other compensation than the taxpayer receives in being protected by the government to the support of which he contributes. But, so far as respects the use, the taking of private property by taxation is subject to the same limit as the taking by the right of eminent domain.

Just why the taxing power "so far as respects the use" should be subject to a limitation that is expressed in a clause of the constitution having no relation to the taxing power, the court does not declare. Indeed it seems almost unnecessary to point out the utter sophistication of this course of reasoning. The eminent-domain clause prohibits the taking of property "without just compensation." This phrase in itself, as more than one court has demonstrated,[3] is sufficient to indicate that the clause has no reference whatever to the power of taxation.

Again it has been declared that taxation for a private pur-

[1] Allen *v.* Jay, 60 Me. 124 (1872). A year before the court rendered this decision it had been asked (under the constitutional obligation imposed upon the supreme court in that state to furnish the legislature upon request with its opinion concerning the constitutionality of proposed or projected legislation) whether the legislature might authorize incorporated towns by gift of money to assist individuals or corporations to establish or carry on manufacturing of various kinds. Although three of the six judges were somewhat guarded in the expression of their opinions on so general a question, they all united in asserting that the legislature had no such power; and in the course of the main opinion written, in addition to a good deal of argument of a very general character, the applicability of the eminent domain clause of the constitution was discussed at some length. Opinions of the Justices, 58 Me. 590 (1871).

[2] 113 U. S. 1 (1884). See also the Opinion of the Justices *in re* municipal fuel plants, 182 Mass. 605 (1903).

[3] Clark *v.* City of Rochester, *supra*; Sharpless *v.* Mayor, *supra*; Booth *v.* Woodbury, *supra*; Thomas *v.* Leland, 24 Wend. (N. Y.) 65 (1840); Town of Guilford *v.* Supervisors of Chenango County, 13 N. Y. 143 (1855); Darlington *v.* Mayor, 31 N. Y. 164 (1865).

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pose would not be legislation and therefore would not be among the powers conferred upon the legislature in the general constitutional grant of legislative power.[1] But this is merely to open the way for the courts to declare void any act of legislation that they deem to be inexpedient or contrary to sound public policy, on the ground that the grant of legislative power does not include the power to enact the law in question. In other words, it is to substitute the opinion of judges for the written words of the constitution. It is to allow judicial officers to write into the constitution whatever prohibitions upon legislative power they may hold to be salutary and wise. It is to permit the judicial branch of the government rather than the legislative, whom the great Marshall effectually interdicted from such sacrilege, to transform the constitution into a "solemn mockery of words."

Indeed, a careful reading of the numerous cases in which this doctrine has been announced impels the conclusion that none of them have progressed very far in the direction of finding constitutional basis for the doctrine either in express provision or reasonable implication. In fact, in one state at least —New York—there existed in the constitution at the very time when the doctrine was receiving judicial sanction an express recognition of the authority of the legislature to impose a tax for a private purpose by a two-thirds vote.[2]

[1] "No such authority passed to the assembly by any grant of legislative power." Opinions of the Justices, 58 Me. 590 (1871). "This is beyond the province of legislation." People *v.* Batchellor, 53 N. Y. 128 (1873). Practically identical with this is the argument used in State *v.* Wapello, 13 Ia. 388 (1862), where it was held that the right not to be taxed for a private purpose was among the "unenumerated" rights mentioned in the constitution.

[2] "The assent of two-thirds of the members elected to each branch of the legislature shall be requisite to every bill appropriating the public moneys or property for local or private purposes." Constitution of 1846, art. i, sec. 9. In the case of Weismer *v.* The Village of Douglas, 64 N. Y. 91 (1876), where an act authorizing the village to issue bonds for the purchase of stock in a lumbering company was held invalid, the attention of the court was directed to this provision of the constitution recognizing the right of taxation for a private purpose; but the court in effect gave the curiously strained answer that this (1) did not indicate the authority of the legislature to delegate such power to a municipal corporation, (2) nor the authority to tax for a private purpose and *immediately* turn over the proceeds of such tax, (3) nor the power to impose a tax to replace moneys appropriated from the treasury for a private purpose.

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In spite of all this, it can assuredly be said that the doctrine is firmly established in our law. The point is that it is established as a general doctrine, not upon the basis of the due-process-of-law clause or any other clause of federal or state constitutions, but upon an extra-constitutional basis.[1] It rests where Mr. Justice Miller put it in the Loan Association case when he declared that "there are limitations on such [legislative] power which grow out of the essential nature of all free governments, implied reservations of individual rights, without which the social compact could not exist, and which are respected by all governments entitled to the name."[2] It rests where Chief Judge Dixon of the Wisconsin supreme court put it when he declared that "such a power would be obviously incompatible with the genius and institutions of a free people; and the practice of all liberal governments, as well as all judicial authority, is against it."[3] It rests where the New York court of appeals put it when the view was expressed that "*on general principles*, it [the power of taxation] is subject to at least one limitation;"[4] or where Judge McIver of the South Carolina court put it when he said that "it seems to be generally conceded . . . that a law authorizing taxation for any other than a public purpose is void."[5] It may be that this principle might have been included under the requirement of due process of law with quite as liberal show of reason as certain other principles to which that guarantee has given rise; but the fact remains, as the law now stands, that it has not been so included, and that it is not a principle of the federal Constitution at all. It stands, in truth, as perhaps the sole example of a fundamental and far-reaching "constitutional"

[1] The disastrous consequences of much of the legislation extending public aid to railway corporations led to the adoption in several states of constitutional provisions which apparently included among other things the principle of no taxation for a private purpose. But these specific provisions have no especial bearing upon our discussion here, which is concerned wholly with the doctrine as a *general* doctrine of our constitutional law.

[2] Loan Association *v.* Topeka, 20 Wall. 655 (1874).

[3] Curtis *v.* Whipple, 24 Wis. 350 (1869).

[4] Bush *v.* Board of Supervisors, 159 N. Y. 212 (1899).

[5] Feldman & Co. *v.* Charleston, 23 S. C. 57 (1884).

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doctrine founded not even upon implication from some elastic clause of federal or state constitutions but upon nothing more concrete and definitive than "general principles."

Most of the cases in which the doctrine of no taxation for a private purpose has been promulgated have arisen out of legislation authorizing or compelling municipal corporations to incur debts, and in consequence to impose taxes, for purposes the public character of which was drawn into question. The doctrine has therefore from its inception, had special relation to the legal capacity of cities. In view of the fact that the field of municipal activity is gradually but steadily expanding, while proposals are constantly being made for changes in certain of those policies and practices of municipal governments which would not be tolerated by private corporate organizations, the city has already felt and will doubtless feel more heavily in the years ahead the cramping and restricting force of anything like a a rigid application of this rule of law. It is not proposed to enter here upon a discussion of this latter point, involving, as it does, many serious considerations. It is sufficient to mention the fact—in order to give the point concreteness—that in some states already pensions for civil employees of municipal corporations have been prohibited on the ground that they are in violation of this principle;[1] while the question of the authority of the legislature to confer upon cities the power (which has been exercised in many cities abroad with remarkable success) to condemn property in excess of what is needed for a specific public improvement has already been presented to the courts in a few cases and will doubtless arise frequently within the next few years.[2] Nor is it intended, either by the citation of these

[1] *Infra*, p. 210.

[2] The grant of such a power was declared to be in violation of the constitution in the early New York case of In the Matter of Albany Street. *Supra*, p. 187, n1. In 1913 an amendment to the constitution giving authority to the legislature to confer such power upon municipal corporations was ratified at the polls. Somewhat similar amendments were made to the constitution of Massachusetts in 1911 and Ohio in 1912. An amendment expressly declaring that adjoining property taken in excess of direct public needs "shall be deemed to be taken for public use" will be voted on in Wisconsin in November, 1914. Statutes have been enacted in a few states conferring the power of excess condemnation without express constitutional sanction.

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specific instances of existing restrictions upon municipal corporations, or by what has been said in respect to the shadowy foundation upon which the doctrine of no taxation for a private purpose rests, to indicate that the application of this rule of law has been wholly without beneficial results, or that its complete repudiation would of necessity be desirable. The fact is that the whole problem growing out of the application of this principle is many-sided and complicated.

Most of the cases in which this principle has been expressly or impliedly asserted have arisen out of legislative enactments permitting but not compelling municipal corporations to impose taxes. Thus, as already indicated, by an overwhelming weight of authority the power of the legislature to allow such corporations (usually upon an affirmative vote of their inhabitants or taxpayers) to subscribe to the stock of railway corporations has been sustained. The legislation here sanctioned unquestionably led to grave abuses. Provisions prohibiting such legislation were later incorporated into the constitution of more than one state.[1] Moreover, even in the absence of such provisions there was strong evidence at a little later date of an inclination on the part of the courts to weaken if not to destroy the force of a rule laid down during the exciting and wildly speculative era of railway construction. In Iowa, for example,

But the whole question of the authority of the legislature, with or without express constitutional permission, to exercise or confer this power is not yet completely settled. Under the doctrine of the federal Supreme Court in Missouri Pacific Railway Company *v.* Nebraska, 164 U. S. 403, and Chicago, Burlington and Quincy Railway Company *v.* Chicago, 166 U. S. 226, it is at least doubtful whether such power, even though exercised under sanction of the state constitution, may not be in violation of the Fourteenth Amendment of the federal Constitution. See Opinion of the Justices, 204 Mass. 607, 616 (1910); *ibid.* 211 Mass. 624 (1912); Pennsylvania Mutual Life Insurance Company *v.* Philadelphia, 88 Atl. 904 (1913).

It is to be noted that, as the law now stands, there would be two grounds of attack upon such an exercise of power, both arising under the "public purpose" rule. One would arise under the eminent-domain doctrine that private property may not be condemned for a private purpose; for the purpose, in narrow construction at least, would be "private" to the municipal corporation. Another would arise under the doctrine of no taxation for a private purpose; for the excess property so condemned would have to be paid for, either by special assessments (which are taxes) or by general taxation.

[1] *Supra*, p. 200, n. 1.

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the rule laid down in 1853 [1] was summarily overturned in 1862 on the flimsy pretext that the clause in the bill of rights of the constitution of 1857 declaring that "this enumeration of rights shall not be construed to impair or deny others retained by the people" prevented the reaffirmation of the rule.[2] But the real reason for this change of front is doubtless shown in the lament of Chief Judge Dillon when in 1869, referring to the original ruling, he declared: [3]

> A most unfortunate mistake it was: counties and cities throughout the state, acting under the sanction of that decision, incurred debts amounting to several millions of dollars, and, in many cases, exceeding their ability to pay. . . . The thought cannot be repressed, how different would be the situation of our state today had the decision in the Dubuque case been the other way. We should have been free of the heavy incubus of debt which that decision bequeathed us, and in all probability had every railroad we now have.

In Wisconsin the court in 1870 limited the force of the rule by distinguishing between a subscription to the stock of a railway and the grant of a donation, holding that the latter was beyond the power of the legislature to permit.[4] But the Supreme Court of the United States, not without sound logic it would seem, utterly repudiated the force of this distinction, declaring that the actual ownership of property was not the test of whether a tax was or was not levied for a public purpose.[5]

In New York there was likewise a noticeable change of judicial attitude; for in 1873,[6] the court of appeals declared that while under the ruling laid down in 1858 [7] the legislature might *authorize* a municipal corporation voluntarily to subscribe to the stock of a railway corporation, it might not *compel* such a

[1] Dubuque County *v.* Dubuque and Pacific Railroad Company, 4 Greene 1.

[2] State *v.* Wapello, 13 Ia. 388.

[3] Hanson *v.* Vernon, 27 Ia. 28. See also McClure *v.* Owen, 26 Ia. 243 (1868).

[4] Whiting *v.* Sheboygan and Fond du Lac Railroad Company, 25 Wis. 167.

[5] Olcott *v.* The Supervisors, 16 Wall. 678 (1872). See also Perry *v.* Keene, 56 N. H. 514 (1876), upholding a permissive donation.

[6] People *v.* Batchellor, 53 N. Y. 128.

[7] Bank of Rome *v.* Village of Rome, 18 N. Y. 38.

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subscription. The somewhat nebulous course of reasoning employed in the later case seemed to be that while the railway business was sufficiently public to justify an enabling act it was sufficiently private to prevent a mandatory act.[1] The fallacy of this argument was pointed out a year later in the case of Duanesburgh *v.* Jenkins,[2] by the judicial commission, which at that time enjoyed concurrent jurisdiction with the court of appeals. In this case it was held that an act of the legislature which validated municipal bonds issued for the purpose of subscribing to railway stock was wholly sufficient to legalize the issue, even though, as it was alleged, the consent of the taxpayers (a condition precedent to the issue) had been secured by fraudulent affidavits. In 1876 the court of appeals itself reaffirmed this decision and also held that where a town had given its consent to the issue of bonds which were to be sold and the proceeds invested in railway stock, the legislature might subsequently *require* the town to exchange its bonds for the stock instead of selling them.[3] But two years later the same court held that, where a town was authorized to issue and sell bonds for investment in such stock, and where the commissioners appointed to negotiate this business exchanged the bonds for the stock instead of selling and investing the proceeds, the legislature might not subsequently validate the issue.[4]

The hair-splitting distinctions drawn in these cases are interesting and important only as they illustrate the somewhat wily attempts of the courts to avoid the consequences of a principle of law which they had laid down a few years before with little hesitation, if not, indeed, with some enthusiasm. It ought to be said, perhaps, that the federal Supreme Court indicated in more than one dictum that the legislature could compel as well as authorize a municipality to subscribe to the stock of a railway.[5]

[1] See also Sweet *v.* Hulbert, 51 Barb. 312 (1868), a case in the supreme court which went even further in the direction of nullifying the Bank of Rome decision.

[2] 57 N. Y. 177 (1874).

[3] Williams *v.* Duanesburgh, 66 N. Y. 129.

[4] Horton *v.* Town of Thompson, 71 N. Y. 513 (1878).

[5] "If the purpose is one for which the state may properly levy a tax upon its citi-

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The change of attitude on the part of the courts in respect to the authority of the legislature to authorize or compel the grant of military bounties is likewise noteworthy. Thus, as already indicated, the power to authorize such grants was usually sustained. But in Massachusetts it was early declared that the legislature could not authorize the reimbursement of persons who had hired substitutes, although in Wisconsin a law which, among other provisions, authorized the payment of a bounty to persons who should secure substitutes was sustained.[1] Twenty years later it was held in Massachusetts that the legislature might not authorize a bounty to be paid to persons who had reënlisted in a certain regiment of volunteers, on the ground that the war was over and the payment of these bounties could not encourage enlistments or in any way affect the public service, or promote the public welfare.[2] And in Wisconsin, only a few years after the war had closed, the court found no difficulty in declaring void a law which compelled the town of Oshkosh to pay bounties to those who had served as a part of the quota of the town.[3] So in New York state, a belated military

zens, at large, its legislature has the power to apportion and *impose the duty*, or confer the power of assuming it upon the municipal divisions of the state." Strong, J., in Olcott *v.* The Supervisors, 16 Wall. 678 (1872). See also Railroad Company *v.* County of Otoe, *ibid.* 667; United States *v.* Railroad Company, 17 Wall. 322 (1872).

[1] Freeland *v.* Hastings, 10 Allen (92 Mass.) 570 (1865). Broadhead *v.* Milwaukee, 19 Wis. 624 (1865). The latter case differed from the former in that bounty was authorized to be paid while the enlistment was in progress. In the Massachusetts case it was a question of reimbursement for substitutes' hire already paid.

[2] Mead *v.* Acton, 139 Mass. 341 (1885). It is difficult to see why a reimbursement of persons who had voluntarily contributed to a fund for securing volunteers should be upheld, as it was in the Freeland case (where it was obvious that the public expenditure could not affect the enlistments, which were already made) and on the other hand a bounty granted after service be declared void. Can the drawing of this invisible line of distinction be due to the fact that the dangers of military draft did not loom as large and impending in 1885 as they did in 1864-5?

[3] State *v.* Tappan, 29 Wis. 664 (1872). This law was invalidated on the ground that it violated the constitutional requirement of uniformity of taxation and the requirement that the legislature should establish a system of town and county government "as nearly uniform as practicable." But the court, unmindful of its patriotic and spirited opinion uttered in the Broadhead case sustaining the public character of

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claim act, by the terms of which boards of supervisors were required upon the request of a majority of the taxpayers to pay the claims of certain persons who were drafted into the military service of the United States, was held void, on the ground that this was not a public but a private purpose.[1] Said the court:

> The individuals for whose benefit the tax was to be levied under the act, had no claim, legal or equitable, against the town or county where the money was to be raised by taxation. Those who actually served under the conscription only discharged their obligations to the general government. Those who commuted simply paid so much money in order to be relieved from such obligations to render military service. In either case the individual . . . had no claim against the locality to reimburse him for what he was obliged to do. The fact that a majority of the taxpayers requested the supervisors to levy the tax is of no importance.

In other words, the public aspects of such a tax levy were during the war overwhelmingly predominant; but once the war was over, the private aspects of the individual's personal obligation to serve his country were at once controllingly manifest.[2] It was thus that the doctrine of no taxation for a private purpose came to be strictly construed in application to the military bounty acts of the post-bellum period.

Meantime the doctrine was being successfully asserted to defeat legislation authorizing various other expenditures by municipal corporations. Thus it was held that a municipality

local taxation for military purposes in 1865, also declared: "The effect of holding that the act of 1869 is a valid law, will be to hold that the legislature may make a contract for the town of Oshkosh without its consent, which will be binding upon it. . . . Clearly, the legislature has no such power." The war was over and the interests of the taxpayer once more occupied the horizon.

[1] Bush *v.* Board of Supervisors, 159 N. Y. 212 (1899).

[2] It ought to be said that, in 1874, section 11 of article viii was added to the New York constitution, declaring that no municipal corporation should give or loan money or credit to any individual or corporation, nor incur any indebtedness except for corporate purposes. The decision of the Bush case was based in part at least on this amendment; but it is to be noted that the amendment contained nothing that would have controverted the doctrine of the earlier cases. See, for example, Speer *v.* The School Directors, 50 Penn. St. 150 (1865), where it is declared that the purpose of such a tax is clearly municipal.

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might not under legislative authorization, incur a debt or levy a tax in aid of a lumber company,[1] or a company manufacturing wrought-iron bridges,[2] or a company engaged in the iron and steel business,[3] or indeed generally "to assist individuals or corporations to establish or carry on manufacturing of various kinds."[4] Neither might a municipal corporation be empowered to exercise the taxing power in aid of a private or quasi-private educational institution.[5] And while taxes might be imposed for the purpose of supporting a municipal utility like a gas or electric lighting works[6] or a street railway,[7] such business being public in character because of monopolistic elements and the necessity of using the public highways and of exercising the power of eminent domain,[8] yet a municipal corporation might not be empowered to engage in the business of selling wood

[1] Allen *v.* Jay, 60 Me. 124 (1872); Weismer *v.* Village of Douglas, 64 N. Y. 91 (1876).

[2] Loan Association *v.* Topeka, 20 Wall. 655 (1874).

[3] Cole *v.* La Grange, 113 U. S. 1 (1884). But municipal bonds issued in aid of a manufacturing company, which on their face appeared to have been issued for a municipal purpose were held valid in the hands of *bona fide* holders. Hackett *v.* Ottawa, 99 U. S. 86 (1878); Ottawa *v.* National Bank, 105 U. S. 342 (1881); Ottawa *v.* Carey, 108 U. S. 110 (1882).

[4] Opinions of Justices, 58 Me. 590 (1871). Parkersburg *v.* Brown, 106 U. S. 487 (1883).

[5] Curtis *v.* Whipple, 24 Wis. 350 (1869); Jenkins *v.* Andover, 103 Mass. 94 (1869). In Massachusetts, however, the law was held void on the ground that the eighteenth amendment to the constitution required that all moneys raised for the support of public schools should be "applied to and expended in no other schools than those which are conducted according to law." In the earlier case of Louisville *v.* University of Louisville, 15 B. Monroe (Ky.) 642 (1855), it was declared that, if the ownership of a certain piece of property by the city and the transfer of this property as well as of a fund raised by taxation to the university corporation which was not under control of the city "were not otherwise legal and valid, they were certainly so by the express authority and sanction of the legislature." In this case, however, the point was not clearly raised as to the power of the city to impose a tax for a private purpose.

Atchison, Topeka and Santa Fe Railroad Company *v.* Atchison, 47 Kan. 712 (1892), held void a municipal tax levied in aid of private sectarian colleges; but here the tax was not authorized by the legislature.

[6] Opinion of the Justices, 150 Mass. 592 (1890).

[7] Prince *v.* Crocker, 166 Mass. 347 (1896).

[8] Pond, Public Utilities, chapters IV and V, and cases cited.

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and coal,[1] or to issue bonds and subscribe to the stock of a company organized to develop coal, natural gas, and other resources of its locality.[2] Nor might such a corporation be authorized to issue bonds the proceeds of the sale of which should be loaned to private persons and corporations seeking to rebuild after the city had been widely devastated by fire.[3] Nor might municipal townships issue bonds in order to secure funds for the general distribution to farmers of provisions and grain for seed and feed following a season in which there had been a distressing failure of crops.[4] Neither might a city be authorized to construct a dam or other river improvement where the city might elect to use such improvement either for water-works purposes or for the leasing of water-power, on the ground that the latter purpose, being distinctly private, could not be provided for out of public taxation.[5] Nor could the legislature confer power upon a county to issue bonds for the purpose of liquidating the obligations of an insolvent railway corporation to the inhabitants of the county.[6]

The statutes held void in the above-mentioned cases were in every instance merely permissive to the municipal corporation. The protection which their invalidation afforded was to the property owner, not to the public corporation. But the cases are important from the standpoint of the protection offered to municipal corporations themselves over against the power of the

[1] Opinion of the Justices, 182 Mass. 605 (1903).

[2] Geneseo *v.* Geneseo Gas Company, 55 Kan. 358 (1895).

[3] Lowell *v.* City of Boston, 111 Mass. 454 (1873); Feldman and Co. *v.* Charleston, 23 S. C. 57 (1884).

[4] State *v.* Osawkee Township, 14 Kan. 418 (1875).

[5] Attorney-General *v.* Eau Claire, 37 Wis. 400 (1875). But an amendment to the act in question which permitted the city to construct this improvement primarily for waterworks purpose and to use the excess water for water-power leases was upheld. Wisconsin *v.* City of Eau Claire, 40 Wis. 533 (1876). See also Austin *v.* Nalle, 85 Tex. 520 (1893), where the city was prevented from constructing a dam for water power purposes, not, however, on the ground that this was taxation for a private purpose, but on the ground that the city had not been either expressly or impliedly granted such power. See also Mather *v.* Ottawa, 114 Ill. 659 (1885), where, however, a specific clause of the state constitution was applied.

[6] Baltimore and Eastern Shore Railroad Company *v.* Spring, 80 Md. 510 (1895).

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legislature. Not many cases have come before the courts in which the state legislatures have attempted to compel municipal corporations to impose taxes for purposes that have subsequently been held to be private in character. It is obvious, however, that what the legislature may not permit, it certainly may not compel. These cases, therefore, give at least some concrete notion of what protection the municipal corporation might, under the doctrine of the adjudicated cases, set up against any attempt on the part of the legislature to force the corporation to levy a tax for a private purpose.

In a few instances such attempts have been made. The matter of mandatory railway aid and military bounty legislation has already been mentioned. In the case of the State *v.* Foley,[1] the supreme court of Minnesota declared void an act of the legislature (to the extent of its retrospective effect) which required the board of county commissioners, where a tax sale had been declared invalid, to refund to persons who had purchased property at such sale not only the purchase money but also interest on the same in excess of the interest which was allowed by law at the time of such sale and purchase. In other words, the law added to the amount of the refund which a purchaser could claim under his contract of purchase; and this addition was required to be paid out of the funds of the county. The law was declared void on the ground that "the power of taxation does not extend to the exacting of contributions from the people for a merely private purpose, unincumbered with any duty, moral or legal, on the part of the state or of the political subdivision upon which the burden is imposed." The significance of this decision is that under it a public corporation was protected against a law which impaired the obligation of a contract into which it had entered with a private person, the contract in this instance being the contract of sale and purchase. The principle of no taxation for a private purpose was applied instead of the principle of the inviolability of contracts, doubtless because the court had in mind the necessity of protecting the taxpayer rather than the corporation.

[1] 30 Minn. 350 (1883).

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Another instance of a mandatory statute declared void on the ground that it operated to compel a municipal corporation to impose taxes for a private purpose was that of the policemen's pension act enacted for the city of St. Louis in 1895. The act provided for the retirement upon half pay of all policemen "who shall serve twenty years." Said the supreme court of Missouri, speaking through Judge Williams: [1]

> It is claimed that the provisions of the act of April 9, 1895, for the retirement upon half pay of police officers after twenty years of service, etc., is a part of the contract of employment of those appointed since the act took effect, and constitutes a portion of the compensation for the service rendered *before* retirement; that the act provides, *in advance*, that the *pay* of the men on the force shall consist of the salaries to be drawn during the time they shall hold their places, and half of the same after they are put upon the retired list. . . . The act, however, is in all essential features simply a "pension law," and is properly so-called. It cannot be treated merely as providing compensation for service rendered before retirement and as a part of the salary therefor. . . . If he [a policeman serving twenty years] has been paid the same as other officers of shorter terms, for the time devoted to public duties, anything in addition thereto can only be regarded as a mere gratuity.

The conclusion of the court, founded upon this course of reasoning, was that the law was in violation of the constitution.[2]

Still another case, involving the validity of a somewhat similar statute, in which the supreme court of California reached the same conclusion was that of Taylor *v.* Mott.[3] Here, however, the statute was far more extreme than the St. Louis policemen's pension act. It seems that the Political Code of California created a class of persons known as "exempt firemen," [4] and

[1] State *v.* Ziegenheim, 144 Mo. 283 (1898).

[2] In this case the law was held to be in violation of an express provision of the constitution (art. iv, sec. 47) declaring that the legislature should have no power to authorize a municipal corporation "to grant public money . . . in aid of or to any individual, association or corporation." This provision, however, merely operated to express in terms the principle of no taxation for a private purpose which has generally been held to be implied. See *supra*, p. 200, n. 1.

[3] 123 Cal. 497 (1899).

[4] Secs. 3337–8.

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that these persons were "to be found on farms and in towns all through the state." Many, if not most, of the persons eligible to become "exempt firemen" had never served as firemen at all. The act in question (of 1895) provided for the creation by municipalities of a fund for the relief of "exempt firemen" who might become disabled. The boards of trustees who were given custody of this fund were required by the law to enroll as possible beneficiaries every person who had received or who might receive a certificate declaring his exemption from fire duty. The result was that "all exempt firemen, by becoming residents and being enrolled, must be permitted to participate in the funds of the municipality when they became disabled, whether they have ever performed any service for such municipality or not." The court declared that "this constitutes a gift and makes the statute subject to the constitutional objections already pointed out." [1]

It ought to be said that in this case the court intimated, though it did not expressly declare, that an earlier California statute (of 1889) which provided for the granting of service and invalid pensions for firemen—a statute practically identical in principle with the police-pension act of Missouri—was entirely within the scope of the authority of the legislature under the constitution. Moreover, in a Pennsylvania case—that of the Commonwealth *v.* Walton [2]—a rule of law directly the reverse of that laid down in the Missouri pension case was announced. Referring to a clause of the constitution of 1873 which prohibited the legislature from authorizing the appropriation of municipal funds in aid of any corporation or individual,[3] the opinion was expressed:

> It is evident from an examination of our cases on the subject that no strictly municipal purpose was intended to be prohibited. The evident purpose of the prohibition was to confine municipalities to the objects for which they were created and to restrain the legislature from authorizing any perversion of them. . . . A judiciously administered pen-

[1] The California constitution contained a provision similar to that of the constitution of Missouri above quoted, *supra*, p. 210, n. 2.

[2] 182 Penn. St. 373 (1897).

[3] Art. iv, sec. 7.

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sion fund is doubtless a potent agency in securing and retaining the services of the most faithful and efficient class of men connected with that arm of the municipal service in which every property owner and resident is most vitally interested.

It ought to be said, further, that while not many cases involving the validity of civil pensions for municipal employees have come before the courts, the practice of creating pension funds for such employees—especially for teachers, policemen, and firemen—under the authority or the mandate of law, is by no means uncommon in the cities of the country. The sources of these funds—differing from city to city—are various. But, in so far as they are in any case created out of *public* funds, it matters not in principle whether the fund arise out of taxation or not; for to the extent that revenue arising out of such sources as fines, fees, and licenses is directed into this channel of expenditure, to that extent must taxes be increased.

The conclusion must be reached that the pension funds established in many cities have simply never been made the subject of attack before the courts on the ground that they operated to impose taxes for a private purpose. Nor is it probable that the courts in many jurisdictions would invalidate at this late date legislation authorizing or requiring such funds to be created. In New York, for example, police-pension legislation dates back to the year 1871;[1] and while the courts have several times been called upon to construe and apply such legislation,[2] there has never been an intimation as to its constitutional invalidity.[3]

From this survey of the adjudicated cases the following conclusions may be summarized. First, that the principle of no

[1] Laws of 1871, ch. 126.

[2] People *v.* Matsell, 94 N. Y. 179 (1883); People *v.* Martin, 131 N. Y. 196 (1892).

[3] See the case of McDonald *v.* City of Louisville, 113 Ky. 425 (1902), where a compulsory firemen's pension act was declared void, not, however, upon the ground that it caused the imposition of taxes for a private purpose, but because the constitution expressly forbade the legislature to *impose* taxes for municipal purposes and required it to *authorize* such taxes. The law was immediately amended so as to comply with the decision of the court (Act of February 19, 1902). In this case the act expressly authorized the fund to be created in part by taxation.

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taxation for a private purpose, although firmly established by decisions in many jurisdictions, has never been placed upon an expressed or fairly implied constitutional basis. Second, that most of the cases in which the principle has been asserted have involved the question of municipal taxation. Third, that while in most instances the tax has been merely authorized, in some instances it has been mandatory; but that the cases taken as a whole furnish a guide for the determination of what protection the municipality enjoys against any attempt of the legislature to enforce a tax for a private purpose under the doctrine that what the legislature may not permit it may not compel. Fourth, that the protection afforded, as is indicated by the very statement of the doctrine, is primarily a protection for the taxpayer and only incidentally for the municipal corporation as such. But even so, the interests of the two are often indistinguishable. Fifth, that while the principle is in one aspect a protection to municipal corporations it is in another aspect a restriction—a restriction which would doubtless present a formidable obstacle in the way of the adoption by American cities of some of the more paternalistic functions and some of the speculative business practices of their European contemporaries. Sixth, that it is at best difficult to determine what is a public and what is a private purpose, the distinction being in plain point of fact largely a matter of opinion. The question as to the wisdom of the principle of law as applied to the taxing power of municipal corporations loses itself obviously in the larger question as to the wisdom of leaving it to the judicial branch of the government to exercise the power of final determination in respect to the expediency and policy of legislation—a question over which there is much room for disagreement.

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THE POSITION OF PARLIAMENT

IN a recent speech Mr. Balfour sorrowfully referred to the decadence of the authority of the House of Commons.

> I have been interested in its traditions and in its history and I am not prepared to admit that all the criticisms that I hear about our deterioration in manners and the inferiority of our speaking and all the rest of it—I am not prepared to admit that these charges are true. But I have to admit that we stand less well in the opinion of the public. I do not think that a debate in the House of Commons is looked to in all parts of the Kingdom and abroad and among our fellow subjects across the seas with the same respect or interest or attention as it was when I was a younger politician. If that be so, it is a great tragedy.

The character of English politics is unmistakably changing. The struggle is now largely one of class interests. Each of the great political parties has already assumed a distinctive representative character. The Conservative party of today is representative of the landed and financial interests; the Liberal party, of the respectable middle classes; the Labor party, of the strong, well-organized trade unions; and the Social Democratic party, of the landless, unorganized proletariat. In the House of Commons, the man of business is aspiring to the rôle of the man of ideas. The appointment of Bonar Law to the place of Mr. Balfour marks the change in character of the Tory party. The so-called administrative expert is claiming the honor of the prophet and statesman. Political opportunism is the order of the day. Debates in the House of Commons are chiefly concerned with matters of practical politics and not with principles. The economic materialism of the nineteenth century has placed its stamp upon the character and legislation of Parliament.

The failure of Parliament to command the traditional respect of the nation at this critical juncture has not been due to any falling-off in the character of English statesmen, to material changes in the personnel of the House, to deterioration in the quality of parliamentary debate or to a lack of patriotic zeal on

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the part of the members. Probably at no time in its history has there been found an abler group of statesmen or a more high-minded body of legislators than are today to be seen in the halls at St. Stephens. And it may safely be affirmed that the members of the House of Commons of the last few years have surpassed all their predecessors in the unselfish purpose and conscientious zeal with which they have carried on their deliberations. Parliament has indeed lived up to its reputation as the greatest deliberative assembly of the world. Yet it has lost some of its hold on the popular imagination. In politics as in religion, faith has given place to doubt.

The British Parliament is passing through an experience which has been common to all legislative bodies—the experience of disappointment on the part of the general public. The democracy of the world has been keenly disappointed at the slowness of social progress. In some countries, particularly the United States, the new democracy has lost faith in representative institutions and calls for the adoption of a more direct system of popular administration. The same spirit of disaffection has been reflected in England. Among the more intelligent members of the community this feeling has found expression in an attitude of scientific scepticism toward all institutions, whether social, religious or political. The spirit of discontent has spread to the general public. To the man of action, the debates of Parliament seem long and meaningless. The struggle of parties presents itself in the light of a selfish struggle for office. Changes of government apparently effect little or no improvement in the lot of the luckless workingman. It is little wonder under these circumstances that grave doubts have arisen as to the value of political action and the utility of political institutions. The political authority of king and Parliament are still unchallenged, but in the minds of many British subjects there is a deep-seated mistrust of the whole system of government.

Moreover, there are particular circumstances which have affected the reputation of Parliament. Probably the most important of these, as has been pointed out by Sydney Low, is the growing influence of the cabinet over the House of Com-

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mons. In almost all countries the executive has been gaining in power at the expense of the legislature; but this tendency has been most manifest in England owing to the intimate relation, or rather inter-relation, of the two departments of government. The long ascendancy of the Conservative party from 1874 to 1905 greatly contributed to the authority of the executive. The Tory party in the House meekly followed their party leaders. The House of Lords perfunctorily registered the decisions of the cabinet. The opposition was too much distracted by internal divisions over Home Rule and foreign and colonial policies to offer effectual resistance to the superior authority of the cabinet. The leaders of the Conservative party most skilfully diverted the attention of the country from domestic problems to foreign relations. And in the field of foreign politics the executive was most independent.

The advent of the Liberal party to power seemed to promise better days for the House of Commons. Foreign affairs immediately fell into the background and domestic questions came to the front. Parliament was in its own element again. The Liberal government at once proceeded to bring forward an extensive program of social legislation in which a majority of the members of the House were most vitally interested. But circumstances combined to defeat the prospect of a parliamentary restoration. At first the majority of the government was so overwhelming that the opposition could utter but a feeble protest against the headlong policy of the executive. The folly of the House of Lords in throwing out a whole series of governmental measures strengthened the hands of the cabinet. The rejection of the budget was a colossal blunder. It challenged the authority of the House of Commons over the public purse. The House was eager to resent the insult. Instead of standing out against the encroaching power of the executive it fiercely threw itself into a struggle with the upper chamber for the vindication of its immemorial rights. The passing of the Parliament Act marked the complete humiliation of the House of Lords. The Commons had won a splendid triumph over their ancient enemies; but the spoils of battle were carried off by the cabinet. The practical establishment of a single-cham-

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ber legislature in place of the old bicameral system was the least significant result of the struggle of the two Houses. More important was the final transfer of the balance of power from the legislature to the executive.

But it would be a mistake to believe that the cabinet has become the arbitrary master of the House. The executive has undoubtedly grown in strength. But this growth does not mean the development of an independent power outside of and beyond the range of legislative control. It is, on the contrary, the direct outgrowth of the confidential relations of the cabinet and lower chamber. Every extension of the royal prerogative has increased the authority of the House of Commons over the executive. The cabinet is strong or weak according to its standing in the House. If it can gain the confidence of the House, it can count upon a fairly secure tenure of office. But, if, on the other hand, the supporters of the government be weak or distracted, the position of the ministry will be precarious indeed, as Mr. Balfour can well testify. In truth, the executive has grown in power as it has become more truly representative of the Commons.

The ascendancy of the cabinet has been built upon the two-party system. The Birmingham caucus destroyed the individualism of the Manchester school and set up in its place a strong party machine. The Conservative party was compelled to follow suit. Members were returned to Parliament as straight party men and were expected to vote accordingly. On reaching the House, they were marshalled into opposing camps under the immediate oversight and direction of the drill-masters of the House, the party whips; and the latter took good care to see that their recruits did not get out of hand and slip away too frequently into the wrong lobby.

But a reorganization of the old party system is now taking place. A spirit of independence has appeared both inside and outside the strict party lines. The new social and economic issues have set men to thinking for themselves. The historic division of public opinion into two party camps is passing away. The advent of the Labor group is only one of the many signs of the approaching disintegration of the House. Within the

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ranks of the Liberal and Unionist parties the widest differences of opinion have arisen on most important questions of policy. The present government is supported by an unnatural alliance of Liberals, Laborites and Nationalists. The Liberal party itself is held together only by the statesmanship of the premier and the broadest spirit of comprehension among the members. The Radicals feel much more at home with the Labor members than with the old Whigs. The "Little Englanders" and Imperialists are in continuous warfare over matters of foreign and imperial policy. On matters of naval and military policy, they are as far apart as the poles. The Unionist party is just as hopelessly divided on questions of fiscal and social reform. A mutinous spirit has already appeared in the ranks of the party and the recent change of leaders has served only to intensify the differences of the members on the fiscal question. The Labor party is likewise torn by internal dissensions. The old trades-unionists are suspicious of their aggressive Socialist friends. The Social Democratic group has cut itself off from all association with the other branches of the Socialist party. The workers are at war with the intellectuals, while the moderates find themselves in much closer sympathy with their radical allies than with their revolutionary brethren. There has been dissension in the Irish party. In this case, unfortunately, personal jealousies among the prominent members have perhaps had as much to do with the dissension as have questions of parliamentary tactics or more fundamental matters of policy.

In the House and throughout the country, the old party system still continues in name and organization; but it has broken down in fact. The social question has supplanted all the old political issues in general public interest. And on many phases of this great question, the members of the respective parties are hopelessly at variance. The division in the ranks of the cabinet and among the opposition leaders over the question of woman suffrage throws a clear light upon the demoralization of the old political parties. The House of Commons is gradually breaking up into a number of more or less allied groups. The confusion and complexity of public opinion is reflecting itself in

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the House. Only the outstanding ability of the cabinet and the intensity of recent political battles have prevented the Commons from degenerating into a factional assembly like some of the continental legislatures.

The gradual disintegration of the House cannot fail to have a most far-reaching effect upon the character of the cabinet and its relation to the House. The system of responsible government has grown up under the two-party system. It presupposes the existence of a strong political organization from which the cabinet will be chosen and on which it will rely for support; and it further assumes the existence of a fairly unified opposition, the leaders of which can be called upon to take over the responsibilities of office in case of the defeat of the government. The absence of these conditions has brought great discredit upon the principle of ministerial responsibility in several European states, as also in some of the British colonies. The experience of the Australian colonies clearly exemplifies the impotence and instability of governments in the face of a factional chamber. The appearance of a strong third party or of numerous independent groups will restore to the House a large measure of its former independence. The individual members will come to the front; they will count for more in public affairs. But the advantage will be dearly purchased, if chaos and disorganization are to be the price of freedom.

The deliberative character of the House of Commons has also suffered from the congestion of parliamentary business. When the Liberal party came into power there was a long arrear of social legislation to make up. The Radical and Labor members vied with one another in their zeal for reform. The various factions of the Coalition clamored for priority of place for their favorite measures. Outside the House the rank and file of the party demanded the speedy realization of the heterogeneous pledges of the party program. In order to satisfy these demands the government was obliged to present an all-embracing program of legislation. There was only one way of getting this mass of legislation through the House and that was by the severest restrictions on the freedom of debate. Every device of parliamentary procedure—the closure, guillotine, kan-

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garoo—was resorted to in order to force the government measures through according to schedule. The opposition protested violently, but in vain. The government succeeded in passing its legislation, but at the expense of the reputation of Parliament as a free deliberative assembly. The effect of this drastic procedure, as Lord Robert Cecil truly said, was to destroy the reality and sincerity of debate.

The situation has been made even worse by the Parliament Act. Under the terms of this Act, a public bill must be passed by the House of Commons at three successive sessions in order to overcome the opposition of the House of Lords. As the government is anxious to carry through its program, it introduces as many of its important measures as possible during the first two sessions of Parliament. To postpone their introduction might be to hand them over to the tender mercies of a hostile upper chamber. The inevitable result is a tremendous congestion of business at the opening of Parliament. The House is immediately confronted with the consideration of a half dozen measures of first-rate importance, any one of which might well engage its attention for a whole session. As the success of the government depends upon its legislative output, the House is driven with breakneck speed through the complicated details of a mass of legislation. The quality and form of the legislation of Parliament have necessarily suffered. Some of the bills are very imperfectly drafted at the time of their introduction and there is little opportunity for whipping them into shape during the committee stage of the House. Under the pressure of the closure, section after section is adopted without explanation or pretense of discussion. The steam roller has become the most effective instrument of legislation.

Under this system, the opposition is engaged in a hopeless battle against the decrees of Father Time. When the fatal moment arrives, debate is automatically closed and the House passes on to the next matter in hand. The supporters of the government who desire the amendment of a bill are almost as helpless as their opponents on the other side of the House. Parliament is converted into a huge automatic machine for registering the decision of the cabinet. And the nation is forced

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to fall back upon the good faith of the government as the surest guarantee for honest legislation.

The strenuousness of party warfare during the early sessions of Parliament produces a necessary reaction during the remainder of the term. The closing sessions of the House are largely devoted to the reconsideration of bills which the upper house has rejected. This is a most listless and dispiriting performance. Debate is largely perfunctory. The House of Commons loses interest in its own proceedings. And as Mr. Balfour pointed out in a recent address, "Directly the House of Commons ceases to be interested in itself, no human being is going to be interested in it." This is indeed the greatest tragedy that can befall a legislative body. It is the beginning of the end of parliamentary government.

Another section of the Parliament Act intensifies the evils of ill-digested legislation. To come within the provisions of the Act a bill must retain practically the same form from its initiation until its final passage, save in so far as the House of Commons may agree to amendments of the upper chamber. Prior to the passage of the Parliament Act, disputes between the two houses in regard to legislation were usually settled by a reasonable adjustment of the conflicting claims of both parties. But today there is little room for a tactful compromise when the Liberal party is in power. The measures of the government are sent up to the House of Lords in practically final form with an express view of their adoption under the terms of the Parliament Act. The members of the Commons may be deeply dissatisfied with a bill as it has left the House, they may be strongly desirous of reaching a settlement with the upper chamber in respect to some of the points at issue, but they cannot subsequently amend the bill in any important particular without endangering the very existence of the government and defeating the bill itself. The only privilege which is reserved to the House is that of suggesting to the Lords the alterations which the House will be prepared to accept. Such a procedure places a serious limitation upon the freedom of the House.

At first glance it might seem as though this would not be the case. It would be natural to assume that the right of sugges-

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tion would be equivalent in practice to the power of amendment. And such it might be and doubtless would be, in fact, if the opposition would agree to accept the principles of the bill in controversy, and would join with the government in the task of improving its form or substance. The Australian Senate has made a very extensive use of its constitutional right to suggest amendments to money bills. It has converted the right of suggestion into the most effective power of amendment. And such, it is safe to say, will be the probable result in England if the Conservative party on coming into office, should leave the Parliament Act on the statute book. But, as it is today, the uncompromising attitude of the House of Lords, and of the opposition in the House of Commons, effectually defeats any attempts on the part of supporters of the government to suggest modifications of a bill. For all practical purposes, the Liberal members of the House are reduced to the necessity of either accepting or rejecting the bill as it was first passed by the Commons. Unless the leaders of the government and opposition manifest a more conciliatory spirit towards one another and a broader liberality towards the House itself, the right even of suggestion may be lost.

But it is not the opposition only which has suffered from the repressive rules of the House. Private members have been subjected to equally rigorous treatment. Notwithstanding the increasing length of the sessions, the government finds it necessary to monopolize a continually longer portion of the time of the House. The private member is being gradually excluded from the field of legislation. He still retains his rôle as an independent law-maker; but his initiation of bills is largely dependent upon the good fortune of the ballot. He is indeed thrice blessed if the government should consent to take up his bill or lend to it special facilities. Under ordinary circumstances he must struggle along with his bill or bills the best way he can during the fag end of the sessions. But the chances are against him unless there is a strong sentiment in the House back of the measure. In any case there is little opportunity for the average private member to win legislative distinction.

In short, the congestion of legislation in the House has

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afforded the cabinet the best opportunity of asserting its political authority over the individual members of the Commons and the House as a whole. The power of the cabinet, like that formerly enjoyed by the American Speaker, has developed out of the necessity of giving direction and leadership to the zealous and often misdirected energy of the House. The House of Commons is so overwhelmed by the mass of proposed legislation that, but for the intervention of the cabinet, it would fall into a state of chronic anarchy. The cabinet is the great self-constituted committee on committees of the House. It determines what legislation it will itself introduce, what public or private bills it will accept or promote, what measures must be defeated and how the time and labors of the House shall be allotted. In a word, it assumes control over the whole process of legislation. The unitary character of the English constitution and the multiplicity of the legislative functions of Parliament have rendered this result almost inevitable. Parliament has been called upon to act as an imperial, national and local legislative body, to regulate affairs of the highest international importance, and at the same time to supervise the pettiest details of municipal legislation. The burden placed upon it has been greater than it could bear. Yet with a blind self-confidence it has clung to its legislative supremacy in the face of its growing incapacity and the strong demands from many parts of the British dominions for a larger measure of local self-government. The legislative ambitions of the House may prove its own undoing.

But notwithstanding all these evidences of parliamentary weakness and incapacity, it is very doubtful if the House of Commons has ever wielded a more powerful influence over the course of legislation than during the past six years. The government has drawn a large part of its inspiration from the tremendous reformatory zeal of its followers in the Commons. It could not help but lead the way when its supporters demanded an assault upon the ramparts of the enemy. The Liberal party has caught something of the enthusiasm of the revolutionary armies of France. To the energy of the rank and file of the Radical members of the House, as much as to the

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statesmanship of the cabinet, is due the wonderful succession of victories which the government has won in Parliament and throughout the constituencies.

But not only has the House of Commons succeeded in directing the legislative policy of the government, but it has been almost equally successful in placing its own imprimatur upon much of the legislation presented to it. In spite of repressive tactics, the measures of the government have been subjected to a critical analysis from friend as well as foe. Practically every important bill has been materially modified during its passage through the House. Some of these measures have been largely recast by the time they have reached the Lords. Time after time, the cabinet has been compelled by its Radical supporters to back down on some important clause of a bill, as for example, in respect to the immunity of trades unions from suit, and the endowments of the Anglican Church in Wales. In the case of the National Insurance Act, the government found it necessary to redraft entire sections of the bill so as to render it acceptable to the House. The Labor party in particular has been a thorn in the flesh of the government. It has been an unsparing critic of the social legislation of the executive. It has wrung from the ministry concession after concession until it has appeared at times as though the Labor, rather than the Liberal party, were in power. The government has consulted with the Nationalist leaders upon every important section of the Home Rule Bill, and now it finds itself under the necessity of materially modifying some of the most important features of that bill. In fact, the independent attitude of the Radical, Labor and Nationalist groups has been the most important factor in the course of legislation in the House.

But it is not only on the floor of the House that the influence of the back benchers has been felt. In the party caucus their power has been even more in evidence. Here the private members have felt free to express their opinions freely without fear of embarrassing the government. The ministry has also learned to fear the small informal gatherings of its independent friends and allies in the House for the purpose of discussing some matter of ministerial policy or tactics. A deputation to the

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government has been the usual result. At one time it is the Land Reformers, at another the Peace Advocates, at still another, the Woman Suffragists. And the government has generally found it expedient to make its peace with the protestants for fear of stirring up more serious trouble on the floor of the House. Whenever the cabinet has ventured to disregard the representations of its candid friends, it has met with defeat or humiliation. The government has learned its lesson. It is now careful to consult in advance the various minor groups upon which it depends for support. The services of the party whips have been in constant demand as mediators between the government and its more independent supporters. The cabinet has earnestly striven to keep in touch with the divergent opinions of its friends in the House. It may have seemed at times, when the guillotine was in operation, that the will of the cabinet was supreme in the House, but on closer examination it will be found that that will was supreme only when, and so far as, it reflected the already ascertained views of the rank and file of the supporters of the government in the House. The private member, it is true, no longer occupies the center of the stage; he plays but a minor rôle in the supporting company; he may not even have a speaking part. But behind the scenes he often exercises a powerful influence upon the measures and policy of the government. Upon his loyal support and discriminating criticism depends to a large extent the success of the government or opposition.

But it is only too manifest that there must be some material modification in the rules of the House, if private members are to preserve the right of promoting public legislation. The government has already seriously encroached upon the three sacred days reserved in part to private members. The Friday afternoons have proved altogether insufficient to make up the arrears of legislation. The House will almost certainly be forced in the not distant future either to place still further restrictions upon freedom of debate, or as seems more likely, to develop the committee system upon a much larger scale as in the United States. But either or both of these remedies will not permanently cope with the congestion of legislation. A

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quiet Conservative administration may afford temporary relief. But in such a case the difficulty will recur in a more acute form. The problem is not so much one of parliamentary procedure as of constitutional organization. Some day or other, as a means of self-preservation, Parliament will be obliged to accept the principle of federation or devolution.

The relation of the House of Commons to the cabinet in matters of administration has also undergone considerable modification in the last few years. In a recent injudicious speech, Mr. Bonar Law declared that "the government had not only destroyed the second chamber and ruined the House of Commons, but in my belief they are endangering the monarchy of the country." Without in any way accepting the alarming declaration of the Conservative leader, it must be admitted that the king has not succeeded in preserving the same freedom and independence of judgment in political matters that the representatives of the Crown have in the self-governing colonies. Today it is assumed almost as a matter of course that the king will follow the advice of his ministry. It is the knowledge of this well understood principle which adversely affects the independence of the Commons. According to the theory of responsible government, the House is able at any time to turn an unpopular ministry out of office. But in practice the political situation is reversed, for the ministry can turn the refractory members of the House out upon their constituencies. The cabinet knows its powers and does not scruple to play upon the fears of the House. The hint of a dissolution is usually sufficient to restore the authority of the government over its recalcitrant followers. The fears of the members, however, will be greatly lessened by the adoption of the proposed Election Reform Bill, by which the general expenses of elections will be borne by the state instead of by the candidates as at present. No other measure will contribute more to the restoration of the independence of the members of the House than this simple and equitable proposal. It will be their charter of freedom.

An even more important factor in developing the authority of the cabinet is the growing intimacy of its relations to the general public. The reputation of a public man is still made to

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a large extent in Parliament, but the leaders of the government and opposition alike no longer think of confining their efforts to the floor of the House. They prefer to carry the struggle out onto the hustings where they can get closer to the heart of the nation. Many important declarations of party policy are no longer reserved for first consideration in the House of Commons. The recent important pronunciamentos of Mr. Balfour on the question of the referendum, of Bonar Law on preferential trade and of Lloyd George on land reform were made at public meetings and were intended primarily for public opinion. The members of the party in the House of Commons were neither informed nor consulted in advance in regard to the matter. There is indeed a strong temptation for the party leaders to overlook the claims of Parliament and to carry the issue directly to the electorate. The leaders of the respective parties are already fairly well informed as to the opinion of the House of Commons on all general matters of administration and legislation and they are in a position to count upon the loyal support of their friends. The mind of the House of Commons is already made up; it is the country at large which requires to be convinced of the expediency of the policy of the government or opposition. As the electorate will determine the issue in the end, it seems the part of wisdom for the statesmen of the day to take the country into their confidence at the earliest possible moment. Such an appeal is a subtle form of electoral flattery. This policy, however, is sometimes liable to land a rash party leader in a most embarrassing position, as Mr. Bonar Law had occasion to learn as the result of a recent unpleasant experience with the members of his own party in the House. The House of Commons is not yet ready to forego its authority or to permit its opinions to be flouted by any party leader. Even the slightest appearance of disrespect on the part of a member of the cabinet is sure to be visited with swift and condign punishment.

But there is another and even more intimate way in which the cabinet comes into relation to the public, to the exclusion of the House of Commons, and that is through the daily work of administration. The heads of the various departments are

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continually coming in contact with the municipal authorities and business interests of the country. The attitude of the administration in respect to the interpretation and enforcement of the law is often more important than the enactment of the law itself. As the problem of government becomes more intricate and legislation more complex, a larger measure of discretionary authority must necessarily be entrusted to the advisers of the Crown. The ordinance-making power of the Crown is rapidly expanding in order to meet changing conditions. The executive is interesting itself in almost every phase of social and economic life. If there is a serious strike in any part of the country, the cabinet is expected to intervene; if there is industrial depression, the cabinet is called upon to start public works; if there is an influx of diseased animals or undesirable citizens, the cabinet is importuned to ward off the threatening danger. The country is becoming accustomed to the idea of looking to the government as an earthly providence, a universal dispenser of worldly favors. The marked increase in the number of officials which has followed in the wake of the socialistic movement has likewise added to the influence of the government over the members of the House and the supporters of the party throughout the country. Whatever patronage there is to distribute is lodged in the hands of the government and not of the representatives of the local constituencies.

Moreover, the House of Commons finds itself so burdened with the plethora of legislation that it has little time to devote to the important constitutional function of supervising the conduct of administration. That such has been the case is made all too evident by the investigation of several administrative departments by select committees during the past few years. Some of the departments, more particularly the Department of War, have shown a tendency at times to regard themselves as more or less free from popular control. In fact, throughout the whole of the administration there has been growing up a bureaucratic spirit of independence and a feeling of resentment against general criticism on the floor of the House.

The weakness of the House of Commons in relation to the executive comes out most clearly in international matters. In

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the past, the House has had no effective means of controlling the foreign policy of the Crown. It was forced to content itself with such information as the executive might graciously afford to it; and much of the information thus rendered was a matter of general notoriety out-of-doors. Many of the Radical members of the House of Commons have long chafed at the humiliating position of the House in foreign affairs. On several occasions resolutions have been presented to the House with a view of pulling the Foreign Office down from its high estate. But the executive has always successfully resisted these attempted encroachments on the royal prerogative. The House of Commons has respected the traditions of the past. It has not been sure of the wisdom of its own pretensions and has hesitated to bring the controversy to a decisive issue.

But within the last few years there has been a distinct revival of the authority of the Commons over the general conduct of administration. Several of the departments of state have been recently subjected to the severest test of parliamentary criticism. The lord high chancellor has been called to account for the distribution of patronage; the Home Office has been worried by the friends of the suffragettes in the House; the War Office and Admiralty have been under fire on account of an alleged lack of preparedness for a national emergency, and the Colonial Office has been harried by the complaints of the discordant races of the British empire. Even the traditional immunity of the Foreign Office has not saved that department from being dragged into the political arena. Sir Edward Grey has been beset on every side by the attacks of his Radical friends. Parliament has demanded and in many cases has secured explanations and confidential documents from the Foreign Office. In reply to a recent question in regard to the military obligations of the country, the prime minister associated Parliament with the government in the decision of the question of war and peace. This is probably the first occasion in English history in which the executive has admitted that the House of Commons was entitled to a voice in the determination of matters of foreign policy. This precedent is of the highest political and constitutional importance in view of the changing temper of the House

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in respect to foreign relations. The Radical and Labor groups in the House are deeply dissatisfied with the standpat policy of the Foreign Office. They repudiate the time-honored doctrine of the continuity of foreign policy. In particular, they demand a more progressive peaceful policy, the abrogation of all entangling alliances, a diminution of the burden of naval and military expenditures and a more sympathetic attitude towards democratic movements in foreign states. With the development of this sentiment, questions of foreign policy are almost certain to become as vital an issue between the two great political parties as domestic questions are at present. When that day comes, as it will in the near future, the House of Commons will demand and secure the same control over the Foreign Office that it now possesses over the Home or Treasury Departments.

The surveillance of the House has gone even further than a critical examination into the general policy of certain of the state departments. The House has appointed a special committee to investigate the personal character and business interests of certain members of the cabinet whose integrity was called in question in the public press. The Marconi committee has proven the effectiveness of the inquisitorial powers of the House. The unpleasant experience of Lloyd George and Sir Rufus Isaacs has been a valuable lesson to all officers of state. Parliament has been equally jealous of its own reputation. Sir Stuart Samuel was forced to resign on account of the dealings of his firm with the India office. The grant of peerages and other public honors to wealthy supporters of the government has been severely censured. Even the decisions of the judiciary in election cases has come under review. The intervention of the House in matters of public administration has indeed been fitful but it has certainly been effective in the majority of cases.

The weakness of the House of Commons comes out most clearly, perhaps, in respect to colonial relations. The House has practically ceased to be a legislative body for the self-governing colonies. Only when the latter themselves initiate the proposed legislation and request the assistance of Parliament in enacting it, does Parliament venture to legislate on colonial

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matters. But in all such cases Parliament acts, not as a free deliberative assembly, but rather as a body of instructed delegates, the temporary agents of the colonial government. No matter how strongly the House may object to the proposed legislation, it does not dare, as is well illustrated in the discussion of the Australian and South African constitutions, to modify the proposed legislation or to substitute its will for the deliberate judgment of the colonists on any material point. Its function is merely that of formal ratification. The parliament at Westminster still retains in theory its legislative supremacy over the whole empire, but its political sovereignty is a thing of the past.

The position of the executive in respect to colonial affairs is fundamentally different. The colonies are ready to submit to the supremacy of the Crown, although denying the supremacy of Parliament. The authorities at Downing Street maintain the closest and most intimate relations with the governments of the dominions. The latter are consulted not only in respect to domestic affairs, but also upon all imperial matters which may in any way concern one or all of them. They have been called to the councils of the mother country. An imperial organization has been gradually evolved to give effect to the changing character of the British executive. The Colonial Conference has become a sort of advisory council to the king. True, it has neither legislative nor executive functions of its own, but it endeavors by its discussions and resolutions to direct the conduct of the British administration. A Committee of Imperial Defense has been created to coöperate with the colonies in working out a uniform scheme of defence for the whole empire. The Dominion governments have been expressly invited to appoint one or more representatives to attend the meetings of this committee, "when questions of naval and military defence affecting the over-seas dominions are under consideration." In a recent dispatch, the secretary of state for the colonies declared that there would be no objection "to the governments of the dominions being given at once a larger share in the executive direction in matters of defence and in personal consultation with individual British ministers."

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In short, while the parliament at Westminster has remained a purely national assembly, the executive has been transformed from a British into an imperial body. As a result of this transformation, the House of Commons has lost a measure of its control over the policy of the executive, especially in respect to the army, navy and foreign affairs. Theoretically, the principle of ministerial responsibility has been carefully preserved in the recent imperial reorganization, but practically it has been gravely affected by the presence of non-responsible colonial ministers in the advisory councils of the administration. The representatives of the over-seas dominions cannot be called to account, save by their respective colonial legislatures; yet their advice may have influenced not only the Committee of Defence and the colonial and foreign offices, but, through these bodies, may have even determined the deliberations of the cabinet itself. And the imperialization of the executive is not yet ended. Only the other day, Bonar Law advanced the proposal that the fiscal policy of England should be considered by an imperial conference before being laid before the country. It is little wonder that the Conservative members of the House rose up in arms against the proposed transfer of the immemorial rights of the Commons over taxation to a non-representative but pretentious imperial conference. In truth the House of Commons was threatened with the loss, not only of its most treasured prerogative, but even of its national character.

The marvelous development of the self-governing colonies has tended likewise to dwarf the preëminence of Parliament. The governments of the dominions are already claiming an equality of legal status and political influence with the home Parliament. In the determination of great imperial issues, the deliberations of the parliaments at Ottawa, Melbourne and Cape Town are scarcely less momentous than are those of the parliament at Westminster. The empire has become a federation of free autonomous states. Matters of imperial policy are no longer discussed at London alone; they are passed upon by the legislatures of all the self-governing colonies. The House of Commons is today only the first and foremost of a group of free and independent parliaments. And the mother of parlia-

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ments, it must be confessed, is destined soon to lose her primacy and give way to the rising ascendency of her ambitious daughters. The premiers of the dominions have already assumed the rôle of imperial statesmen. To Sir Wilfred Laurier belongs the honor of introducing the policy of preferential trade, to Sir Alfred Deakin and Sir Joseph Ward is due the credit of forcing the question of imperial reorganization upon the attention of the British government, while Mr. Borden has taken the lead in the campaign for an imperial navy. The colonial parliaments have been quick to respond to the spirit of imperial coöperation. Although strongly nationalistic in feeling, they have led the way in the new imperial movement. Meanwhile, the parliament at Westminster has remained to a large extent a passive spectator of events. It has not been able either to direct or control the course of imperial politics. It has lagged in the rear of the procession.

The indifference or preoccupation of the House of Commons has cost that body much prestige in the colonies and has not enhanced its reputation at home. Colonial feeling, in truth, is as much incensed at the appearance of neglect on the part of the British parliament as it is indignant at the suggestion of interference in colonial affairs. The dominions at present are in the self-conscious, possibly somewhat bumptious stage of their existence. The mature self-possession of the British parliament irritates their vanity; it seems to betoken a sense of superiority or a feeling of selfish indifference. They are quick to accuse the House of Commons of narrow-minded provincialism. But the taunt of "little Englander" does not proceed from the colonists alone. There is a growing body of English imperialists who are deeply dissatisfied with the insular attitude of the British parliament and demand that it shall throw off its provincialism and take unto itself a truly imperial character.

There is little doubt that some such transformation must take place, if the House of Commons is to retain its primacy in the empire. It is folly to expect that the colonial dominions will much longer recognize the supremacy of the British parliament. They may before many years equal the mother country in wealth and population. When that day comes they will as-

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suredly demand a status of complete independence or an equal share in the government of the empire. Parliament must soon make a choice as to whether it will remain a national or become a true federal assembly. If it desires to play the commanding part in imperial politics that it has in English history, it must adapt itself to the changing order of events. Upon the solution of the federal problem depends to a large extent the future of Parliament and the empire.

Perhaps the most striking manifestation of the disability of the Commons is to be found in its loss of control over the executive in the matter of the budget. It would almost seem as though the House had forgotten its early history, or that Samson-like, it had grown so self-confident as to be unmindful of the source of its strength. The congestion of business in the House has seriously impaired the financial power of the Commons. The granting of supply has afforded the only satisfactory opportunity for a systematic survey of the work of the various departments. By the standing orders of the House, debate is now automatically closed on the last day but one alloted to supply, and the chairman proceeds to put the question on all the votes outstanding in committee. Under the operation of this rule, as has been pointed out by a recent writer, the amount of supply granted without debate has increased during the last eleven years from four to sixty-seven million pounds. This is indeed a most dangerous and alarming tendency which, unless checked, will render the executive largely independent of the financial control of the House.

The House has been somewhat more successful in maintaining its control over public expenditure. The controller and auditor-general, who is directly responsible to the House, examines and reports upon the accounts of the several departments. These reports are referred to the Committee of Public Accounts, among whose members will be found some of the keenest financial critics of the government. This committee in turn examines the accounts with the greatest care and reports its findings back to the House. The committee under the leadership of Gibson Bowles was very effective in checking the tendency of some of the departments to overrun their accounts.

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Thanks to his vigorous agitation for a stricter supervision of the public purse, the Committee on National Expenditure brought in a proposal that the House should set aside at least one day for the discussion of the report of the Committee on Public Accounts. Some such reform was indeed most urgently required. But unfortunately the House has been too much concerned with purely political questions to take much interest in matters of financial administration, and the subject has been permitted to drop for the present.

The essentially partisan character of recent legislation has likewise seriously reacted on the authority of Parliament. Until the nineteenth century, the common law was the fundamental basis of the law of England. It represented the inherited legal traditions of the nation as interpreted by the courts. In theory at least, the courts merely sanctioned the accepted usages of the people. But in recent years, Parliament has overwhelmed the body of the common law by the multiplicity of its enactments. Now the legislation of Parliament is to a large degree party legislation; it is not the expression of the consensus of public opinion, but of the will of a majority in the House of Commons—a majority that has often forced its measures through in face of the bitter opposition of a powerful minority within and without the House. In many cases, as for example in respect to the Education bills, Welsh Disestablishment and Home Rule, the measures of the government have flouted the deepest social and religious convictions of a large part of the nation. To this minority, Parliament has seemed the worst of modern tyrants. In place of a general body of law based presumably upon the consent of the governed, there has been set up a system of class legislation supported and enforced by a partisan majority. The individualism of the nation has risen up against this new form of coercion. Partisanship has gone too far, and there are already evidences of a reaction. Moderate men are seeking for a compromise. They are appealing to the government to call a conference for the peaceful adjustment of the questions at issue. They are demanding a rational settlement of the Home Rule question in place of party polemics and threatening ultimatums. Such a

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settlement, it would seem, is the surest way of restoring respect for law and the authority of Parliament.

The disorganization of parties in the House of Commons has likewise exposed the character of Parliament to serious imputations. The attitude of the several jealous factions towards one another and their relations to the government have often appeared in the light of the shady operations of rival concession hunters. The various groups have seemingly been willing to sell their support for a valuable consideration, and apparently the government has not hesitated to accept the conditions of the offer. To the average Conservative elector, the legislation of Parliament has represented merely the deals and concessions by which the government has retained the votes of its discordant supporters. Some of the worst features of log-rolling have been in evidence. A vote for Home Rule has been exchanged for one for Welsh Disestablishment and the latter in turn for one for Scotch temperance legislation, and so on. To many an anxious citizen, factionalism rather than principle has appeared to reign supreme. Parliament has suffered from the odium which almost inevitably attaches to a coalition government. And, unfortunately, a change of government would effect little improvement; for the Conservative party has been also discredited by its successive struggles and compromises over the question of tariff reform.

The subtle influence of the money power in Parliament has also aroused the suspicion of the public as to the fidelity and independence of some of its servants. The costliness and complexity of modern politics have led to the creation of powerful party organizations. The working efficiency of the party machines depends to a large extent upon the condition of the war chests; and the sources of the party funds are carefully kept from public view. Many contributions are undoubtedly prompted by a genuine zeal for the public service; but some, it is to be feared, are influenced even more by considerations of personal preferment or financial interest. In any case, the financial backers of the government are often the real power behind the throne. They are the invisible government. A seat in the House of Commons, an appointment to the imperial

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service, a baronetcy or a peerage are the customary rewards for generous assistance to the party exchequer. It may, and does sometimes happen, that an important measure has had its origin or inspiration in these powerful influences close behind the party organizers. The recent Marconi revelations have brought close home to the public the temptations of political life. The financial interests are continually pressing upon the government their claims for fiscal or contractual privileges at home and for special protection for their investments abroad. And these special claims will usually be found masquerading under the guise of patriotism. The public are by no means sure that Parliament is free from the operations of these malign influences. Many of the members of both houses are closely identified, in a social or business way, with the financial interests; and however honest the motives or pure the patriotism of these members may be, their views on public policies cannot help but be colored by these associations. This is perhaps the greatest, because the most insidious danger to which Parliament is exposed.

Another factor which has contributed not a little to the loss of influence by the House of Commons has been the rapid growth of competing legislative bodies in the great industrial cities of the land. Problems of local government attract almost as much public attention as questions of national or foreign politics. The opportunity for distinction and for high public service in municipal politics is scarcely less than on the floor of the House of Commons. The administration of the affairs of London, Liverpool or Glasgow is almost as difficult and complex a problem as the government of England itself. It is a task to command the highest order of statesmanship. These local governments, by reason of the fact that they come in such close touch with the daily lives of the public, cannot fail to deflect much of the attention of the people. The ordinary citizen is more concerned with the problems of water, gas, housing, or tramways, than he is with the Persian question or the status of Kaffirs in South Africa. The continued extension of the power of self-government must increase the influence and authority of the local councils. These councils will still continue to ex-

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ercise their powers in legal subordination to Parliament, but in course of time, from the very necessity of the case, they are certain to become great self-governing communities with home-rule charters.

The growth of the new internationalism has likewise materially modified the national status of Parliament. The silent working of powerful social and economic forces has joined the civilized states together into a loose world-federation. The practical cosmopolitanism of this generation has found expression in a whole series of international unions, both public and private. From the very force of circumstances, England has been drawn into the new world-movement. The new cosmopolitanism has especially appealed to the humanitarian conceptions of the Radical party. The Conservative party, on the other hand, has been much more critical as to the effect of the movement upon the national sovereignty of England. But whether for good or evil, the government of England has found it expedient to be represented at the various world conferences and to take a prominent part in the proceedings. On almost every international administrative bureau or commission will be found one or more British officials. England has become but a single state in the great world *Staatenstaat*. The parliament of Westminster finds itself merely one of the legislative units in a world federation. It still retains its legal political sovereignty within the British dominion, but it acknowledges the superior moral authority of an international congress or commission. In many matters, it acts as a local legislative agent for the circle of nations. From time to time it refuses to carry out the decision of some international conference, as in the recent case of the London Naval Conference, but as a general rule, it faithfully registers the decisions of the associated governments.

The new internationalism has already impaired the national independence of Parliament. A whole series of subjects which were formerly reserved for the exclusive jurisdiction of Parliament are now referred to the determination of an international congress or tribunal. The economic relations of states are being rapidly internationalized. The postal and telegraphic services have passed under international control. Uniform police,

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labor and sanitary legislation has been adopted by various countries. The Brussels Sugar Convention pointed the way to an international tariff. The British Parliament woke up with surprise one morning to find that it was threatened with the loss of its control over the fiscal policy of the nation. The London Naval Conference gave it another rude shock. Parliament has at last begun to realize that its freedom of action must henceforth be conditioned by the general conventions of the civilized world.

The supremacy of the House of Commons has been equally affected by the growth of powerful social and economic organizations at home, which compete with Parliament in public interest and influence. Modern society has become so complex that it is now impossible to express all activity in terms of parliamentary life. Religious, educational, financial, industrial and social organizations of all kinds play a most important part in the lives of the general body of citizens. Many of these great interests are developing a power and organization which can challenge, if not defy, the authority of the legislature. The results of a Lombard Street Conference, a trades-union congress, or an ecclesiastical assembly, are often more important than a session of parliament. The trades unions, in fact, have set up a great representative assembly of their own which legislates as freely and authoritatively for its members as Parliament does for the nation at large. A tightening of the money market or a decision to strike may paralyze the social and economic life of the country. Yet Parliament can do little to relieve the situation. A group of refractory physicians, militant churchmen, neurotic suffragettes or belligerent Orangemen may drive the House of Commons to distraction and yet escape with immunity. In fact the whole doctrine of parliamentary supremacy has broken down in practice. Instead of exhibiting a splendid Olympic omnipotence before the people of England, the House of Commons sometimes presents a humiliating spectacle of human weakness and incompetency.

It is difficult indeed for Parliament to hold the attention of the public at all times in the face of manifold distractions on every side. The public press is quick to minister to every new

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desire on the part of the public. The daily proceedings of Parliament seem dull and commonplace alongside of the latest novelty or sensation of the day. The piquant item of news will always attract more attention at the moment than the more serious problems of church or state. It is not surprising that the debates of the House will often be found tucked away in an inconspicuous corner of the evening paper. It is only when the personal element comes into play, when there is an incident in the House, a scandal, a cabinet crisis or a general election, that the attention of the public is focussed on public affairs.

But the House of Commons has itself to blame for a considerable measure of its present unpopularity. The halls at Westminster have recently been the scene of the most disorderly proceedings, which even the authority of the speaker was unable to suppress. Not a few of the elect gentlemen of England have behaved in a manner which would have disgraced a mob in Billingsgate. The general public regarded this exhibition with mingled feelings of astonishment and disgust. The country was accustomed to periodic Irish outbursts. But here was something different, a malevolent conspiracy which affected the honor and dignity of the whole nation. It reflected upon the national capacity for self-government. The members of the House were soon made to realize that the country at large was jealous of the reputation of Parliament and deeply resented the shame which had been inflicted upon it. The House repented, but the nation has not yet forgotten the day of its humiliation.

It would be a mistake, however, to conclude that these discreditable scenes are an evidence of the deterioration of Parliament. They may, on the contrary, be more properly considered as an evidence of its increasing authority. Heretofore all important constitutional changes have been brought about as a result of external pressure, amounting in some cases to revolutionary violence. Magna Charta and the Bill of Rights were won by force of arms and not by parliamentary process. The Reform Bill of 1832 was the product of popular agitation rather than of parliamentary deliberation. Parliament merely registered the decision of the general public. The Budget and the

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Veto mark the triumph of an equally important revolutionary movement. But this revolution has been essentially parliamentary in character. It was parliamentary in origin, parliamentary in activity, and parliamentary in fruition. Notwithstanding the passionate appeals which were made to the electorate, there was throughout the country a singular moderation of public opinion. Not that the public were disinterested, but that the great majority of citizens preferred to allow the House of Commons to fight the question out. The sporadic outbursts of the die-hards were the only manifestations of a revolutionary spirit. The constitutional ascendancy of the House of Commons was never more clearly revealed.

The proposed reformation of the House of Lords will undoubtedly have an important effect upon Parliament. The hereditary character of the upper house has been a constant source of weakness, especially in the minds of the democratic members of the community. The Parliament Act has made matters worse by reducing the upper chamber to impotence. It has cost the Lords the respect and confidence of their friends in the Conservative party. Without honor among either friends or foes, the upper chamber has almost ceased to maintain its self-respect. The entire, or even partial democratization of the Lords, as has been proposed, cannot fail to restore some of its lost prestige, even though it cannot revive its former influence in matters of state. Such a policy would command the support of a large proportion of the Liberal party. The establishment of an effective upper chamber would win the approval of the Conservative party. A majority of the nation undoubtedly prefer a bicameral organization of the legislature. England has not yet been converted to the Labor platform of a single all-powerful chamber. A popular but conservative upper house would add to the authority of Parliament throughout the country. It would subject the policy of the government to a second and perhaps more impartial analysis. It would ward off the danger of the despotism of an undisciplined democracy. It would quiet the fear of hasty legislation and afford the country at large a further opportunity of examining into the merits of the government's policy and measures.

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In a recent address, Mr. Balfour warned the House of Commons of the disastrous results which would ensue from the democratization of the upper chamber. The application of the representative principle to the upper house would, in his judgment, lead to a revival of the authority of that body at the expense of the Commons. As a true representative body, the reconstructed House of Lords would claim and justly claim equality of rights with the popular chamber. The superior dignity and prestige of the upper house would, he contended, enhance its reputation above that of the House of Commons, and draw away from the latter many of its ablest and most distinguished men.

But the fears of Mr. Balfour appear to be greatly exaggerated. It is exceedingly doubtful if the Commons would surrender even to an elective upper house the special legislative powers they have gained under the Parliament Act. The upper chamber can scarcely hope to reëstablish its legal equality with the House. Political equality is even more out of the question. The House of Commons would never agree to forego its exclusive control over the conduct of the administration. And so long as the House maintains its organic relation to the cabinet under the system of responsible government, so long will its political and constitutional ascendency be assured. In the face of this cardinal principle, an elective upper house would be almost as powerless as the existing hereditary chamber. The experience of the Australian Senate supports this conclusion. The framers of the Australian constitution expressly provided for a popularly elected upper house, with a view to making it an effective counterpoise to the national house of representatives. But their plan came to naught. The principle of ministerial responsibility was too strong for the Senate. Today the Commonwealth government recognizes the supremacy of the national chamber only. The Senate has become a mere debating society. It is difficult to see how the outcome could be otherwise in England. The cabinet system is fatal to a bicameral legislature. Whatever the mode of selection or however able its personnel, the upper chamber will continue to play but a subordinate position in political life so long as the principle of the

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responsibility of the ministry to the House of Commons endures.

We may conclude, then, that the political condition of England is not as serious as has been represented by some timid alarmists. Parliament has indeed fallen upon evil days. It has suffered in reputation and prestige. But it has not lost its character or its ideals. The House of Lords has indeed been abased, but the Commons have escaped from the hands of the spoiler. In a recent speech Mr. Asquith emphatically declared that the alleged "decadence of the House in authority and dignity was a pure fiction." The statement of the premier is undoubtedly too favorable, but it is nearer the truth than the sorrowful conclusion of his philosophic opponent, Mr. Balfour. The House is now under fire but it is standing the ordeal well. It is lacking neither in courage nor in statesmanship. And in the end these high qualities will serve to reëstablish the old relation of mutual good-faith and confidence between Parliament and people, which has been the glory of the English constitution.

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THE POINT OF VIEW OF THE BRITISH TRAVELER IN AMERICA

THERE has been a general belief in the United States that British writers and reviewers in the earlier years of the last century found the keenest satisfaction in malicious attacks upon anything American, that magazines and books were filled with the reproach of America, indeed that hatred of America so filled England that men deliberately journeyed to the new world to find new bases upon which to report the condemnation of the United States. Tradition has gone even further than to ascribe malice and intentional injustice to the writers, and asserts that British ministers actually hired travelers to scour the United States for unsavory tales of corruption and brutality.

It is difficult to believe that an intelligent American public, sensitive as it undoubtedly was, self-conscious and vain as is a new nation, could really have believed so preposterous a statement as this last. Yet there were many who gave credence to the charge, and, amazing as it is, there are men today who accept it. The belief is current, apparently, that, not only for forty years did the British traveler and writer systematically ridicule and abuse the American nation and people, but that the British government actually subsidized agents for that express purpose.

In Mr. Henry Cabot Lodge's *One Hundred Years of Peace* the writer says there was, for years, systematic defamation of the United States and that, to the English critic "everything in the United States was anathema." For confirmation of this broad charge Mr. Lodge refers his curious readers to McMaster's vivid description in his chapter on "British Criticism of the United States." The showing of McMaster's entertaining chapter on the period is hardly sufficient ground upon which to base so large a conclusion, even though one go back of McMaster to the English reviews so violently condemned. However consistent the prejudice of the reviewer of any volume of

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travel, the actual unfairness of presentation should be evident in the volume reviewed. If the reviewer chose to distort or misrepresent a volume of travels, he has only done what reviewers before and since have done, most unjustifiably of course. There is undeniable evidence that such distortion did frequently occur, and the magazine itself may be held responsible for the false impression created. The real responsibility, however, for basic statement and correct information must lie upon the British traveler himself, and interest centers in his honesty, his capability and his point of view. A careful study of these travel volumes is the best refutation of charges of persistent dishonesty and malice.

In the years from 1810 to 1860 widespread British interest in the United States led scores of English travelers and writers to cross the Atlantic for the American tour. The average is rather better than one for each year and the resulting volumes number easily twice as many more. These volumes present reports and pictures of America widely differing; they vary from the deepest condemnation to the most unreasoning eulogy, and their conclusions are valuable only as the writer's status is established. The object of this present paper then, is to consider, not the picture presented, but rather the mental attitude of the writer when composing it. His conclusions are, of course, inevitably influenced by his social status, his political affiliations and his mental and moral prejudice. To a certain extent it is not impossible to classify English travelers in this regard. Taken individually, each author may be traced to his social, political, and intellectual environment; his reasons for writing may be discovered, and his judgment estimated in the light of such environment. Such detailed examination shows that the works of each ten-year period are characterized by a certain uniformity, and that the transition from one decade to another marks a corresponding change in British travelers. While there are always exceptions to such a statement, it is unquestionably true that the writers for each ten years form a natural group and that, for an explanation of such grouping, one must turn to industrial and political conditions in Great Britain.

In general it may be said of the writers that some were ab-

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solutely open-minded, some were strongly biased, but few were either wilfully misleading or consciously insincere. Even the diametrically opposed findings of travelers of the same period show rather the opposed point of view than dishonest report. The books treated a score of topics of first importance to the English reader. Among these are slavery, political institutions, intemperance, American humor, manners and customs, hospitality, industrial and agricultural opportunity, education, poverty or the absence of poverty, American railways, and democracy in the working. It is to this last topic, both in its social and political aspect, that this paper turns in illustration of the traveler's changing point of view.

I

The typical traveler of the first decade, 1810–1820, was the middle-class Englishman interested in agriculture, generally discontented with political conditions at home, commonly opposed to what he considered a petrified social order, and attracted to the United States by its lure of prosperity and content. The rewards of emigration, not for the laborer, but for the farmer and tradesman, inspired the work. The object of the author was to describe industrial opportunity, and especially agricultural opportunity and to do this in an honest and critical spirit. The books were without incident, attractive description, or literary merit, and there was very little examination or analysis of American institutions. They were rather a superior type of emigrant guide for a superior type of emigrant. Thus the writers from 1810 to 1820, with the exception of Faux,[1] do not dwell primarily upon the crudities of American life, nor upon its more unpleasant features. Flint, Hulme, Cobbett, Birkbeck, Fearon, Hall and Melish, all wrote of the emigration to America of the middle-class Englishman.

Melish,[2] a Scotch Whig, and later a resident in America,

[1] W. Faux. Memorable Days in America. London, 1823, 1 vol.

[2] John Melish. Travels through the United States of America in the years 1806 and 1807 and 1809, 1810 and 1811, including an account of passages betwixt America and Britain, and travels through various parts of Britain, Ireland and Canada. Philadelphia, 1812, 2 vols.

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writes: "A republican finds here a Republic, and the only republic on the face of the earth that deserves the name, where all are under the protection of equal laws—of laws made by themselves." Lieut. Francis Hall[1] (1816–1817) is impressed with the universal interest in political institutions and claims that it "generates intelligence or a quick perception of utility, both general and individual." This observation, which is made in various forms by many later writers, both friendly and unfriendly, is in curious contrast with a sweeping characterization cited and condemned by Mr. Lodge: "The supreme felicity of a true born American is inaction of body and inanity of mind." Not even the most malicious and abusive of British travelers would have made a statement so obviously absurd. Hall also observes: "Laborers have not yet discovered the necessity of yielding 19 parts of their earnings to the government to take care of the remaining 20th."

Morris Birkbeck,[2] whose first book, *Notes on a Journey in America*, was followed by his *Letters from Illinois*, had established a colony of his countrymen at English Prairie, Illinois. A man of sufficient capital, he had expended some $25,000 in removal to, and settlement in, his new home. His *Letters etc.*, intended primarily to induce further emigration from England, were so glowing in description and so unduly rich in promise, that they received the severest censure in both countries. Indeed his Illinois experience so prejudiced him in favor of all things American that his judgments are far from trustworthy. Writing of England he objected to "being ruled and taxed by people who had no more right to rule and tax us than consisted in the power of doing it." And of his adopted country he concludes: "I love the government. . . . And thus a new sensation is excited; it is like the development of a new faculty. I am become a patriot in my old age."

Fearon's *Sketches of America*, prefaced with the statement:

[1] Lieut. Francis Hall. Travels in Canada and the United States in 1816–17. London, 1818, 1 vol.

[2] Morris Birkbeck. Notes on a journey in America, from the coast of Virginia to the territory of Illinois, with proposals for the establishment of a colony of English. Philadelphia, 1817, 1 vol. Letters from Illinois. London, 1818, 1 vol.

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"I have had every motive to speak what I thought the truth and none to conceal or pervert it," bear the stamp of intelligent and conscientious inquiry.[1] He came to America to report to thirty-nine families the outlook for a general American emigration. Until recalled to England, because publication of Birkbeck's volume had led many of the families interested to invest in the Illinois venture, Fearon wrote with painstaking care and unprejudiced pen. Vexed, however, at the demand for his return before completing his mission, and irritated that his friends should commit themselves to the Birkbeck colony, his reports betray increasing bias and irritation. Conceding that America is the "poor man's country," and that for the British laborer it is a desired haven, he affirms, in defiance of Birkbeck, that the farmer is but "scantily remunerated" and that "shop-keepers will do as well as in London but no better." In regard to government he says: "The principle of at least liberty is acknowledged and the fact of a free government exists."

Before passing on to the consideration of another decade it is worth while to read from the reputedly hostile *Edinburgh* of 1814 a prophecy in which we, living a century later, can hardly fail to find interest.

> America is destined, at all events, to be a great and powerful nation. In less than a century she must have a population of at least 70 or 80 millions. . . . All these people will speak English, . . . will probably live under one government, whether republican or monarchical, and will be industrious, well educated and civilized. Within no very great distance of time . . . America will be one of the most powerful and important nations of the earth; and her friendship and commerce will be more valued than that of any European State.

II

While the books of the second decade, 1820–1830, served indirectly to furnish the basis for McMaster's entertaining de-

[1] Henry Bradshaw Fearon. Sketches of America. A narrative of a journey of five thousand miles through the Eastern and Western States of America . . . with remarks on Mr. Birkbeck's "Notes" and "Letters." London, 1818, 1 vol.

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scription in his "War of the Reviews," they apparently failed to receive first-hand examination from him. Many another reviewer has found in the book merely a peg to hang his own theories on and, with a few picturesque quotations, sacrificed the volume he would review to the effect he could produce. The books from 1810 to 1830, however they may have been exploited and misrepresented by reviewers, were surely not written for the attention and advertisement they might receive in the big Reviews. They were generally the work of men who were in earnest and who strove to make helpful suggestions and to answer definite questions. While the books of the first decade attempted this for men of ability and means, the interest for the second ten years was almost exclusively in the laboring classes.

More distressing than the political discontent of the farmers of the earlier period were the hardships and handicaps of the wage-earner in the twenties; and the books of the period are dedicated to some solution of their difficult problem. For the workingman at home, affairs were indeed critical. Farm laborers were losing their grazing rights, machinery was throwing the handicraftsman out of employment, the operation of the Poor Law contributed steadily to his increasing poverty, and the future offered nothing but misery.

The writers were either the more intelligent of the emigrants themselves, whose home letters were published, or were men imbued with radical and humanitarian sympathies who came to America to discover what promise the country offered to a poverty-stricken people. The emigrant wrote with a simplicity and directness that went straight to the understanding of the British laborers. He did not discuss liberty or democracy or society, but stated over and over again that he had good wages, was "one of the family" and that he had "three meat meals a day." Such testimony as is found in these books, as well as that in the bulky parliamentary report of Wilmot Horton's Committee on Emigration in 1826, all affirm the same truth, that in America the wage-earner need not fear starvation.

Although not quoted from any volume of the period, the following extract from a letter in the *Edinburgh Scotsman* in

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March, 1823,[1] is exactly in line with the thought and expression of the decade.

> I am here, lord and master of myself and of 100 acres of land—an improvable farm, little trouble to me, good society and a good market, and, I think, a fine climate, only a little too hot and dry in summer; the parson gets nothing from me; my state and road taxes and poor rates amount to $25 per annum. I can carry a gun if I choose; I leave my door unlocked at night; and can get snuff for one cent an ounce or a little more.

Captain Basil Hall's[2] three volumes of 1829 mark the departure from the guidebook type, discovering material advantages, and the transition to the more discursive analytical books of the succeeding decade. Throughout the entire half-century no book of American travel was more widely read nor more generally commented upon than was this. None received greater popularity in England and none more exasperated the American public. A conscious superiority, a gracious toleration, an entertaining though superficial reasoning, and an admirable dignity that omits personal allusions, all are characteristic of Captain Hall's work. Claiming that he brought to America a mind not only "open to conviction" but prepared to admire, he expects for his adverse findings a readier credence. For adverse they are, indeed, in all their larger application; and in every line they betray the old Tory of the Twenties, fixed in his belief and convinced of the perfection and unalterableness of the British Constitution. This is his "point of view," not to be forgotten in using his work as historical evidence. Hall's analysis of the American system is not based on a real examination of the workings of that system but rather on what his theory leads him to think must be its workings. He says: "America has drifted from a Republic of representative men to as nearly a pure democracy as possible," and later: "My opinion now is that while each of our governments retains its present character, any closer intimacy between us is not likely

[1] Cited by *Niles's Register*, vol. xxv, p. 39.

[2] Captain Basil Hall. Travels in North America, 1827–1828. London, 1829, 3 vols.

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to spring up." His attitude and conviction are summed up in his quotation of the twenty-fourth and twenty-fifth verses of the thirty-eighth chapter of Ecclesiasticus, in the Apocrypha:

> The wisdom of a learned man cometh by opportunity of leisure: and he that hath little business shall become wise. How can he get wisdom that holdeth the plough, and that glorieth in the goad, that driveth oxen, and is occupied in their labours, and whose talk is of bullocks?

III

Captain Hall's work is the first of the distinctly critical type which characterized the period 1830–1840. The political crisis in England, with the Reform Bill of 1832, turned the minds of thinking men to a study of democracy and its demonstration in America. In this decade there is but one notable exception in the score and more of writers whose judgments are determined by political and social predilections in England. It is perhaps quite natural that the writers of the period should have been impelled to explain America according to the pros and cons of their adherence to the democratic theory; and it is true of the great majority that the volumes were expected to reach a political public and to preach a gospel.

All were not so frank in avowal as Captain Hamilton,[1] whose clear and entertaining volumes, *Men and Manners in America*, found so large a sale on both sides of the Atlantic. An army officer, a dyed-in-the-wool Tory, a facile writer, a valued magazine contributor, he states in his preface:

> When I found the institutions and experiences of the United States deliberately quoted in the reformed parliament, as affording safe precedent for British legislation, and learned that the drivelers who uttered such nonsense, instead of encountering merited derision, were listened to with patience and approbation by men as ignorant as themselves, I certainly did feel that another work on America was wanted, and at once determined to undertake a task which inferior considerations would probably have induced me to decline.

[1] Captain Thomas Hamilton. Men and Manners in America. Edinburgh and London, 1833, 2 vols.

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More moderate in tone and considerably more plausible were the statements of a Lincoln's Inn barrister, Godfrey Vigne,[1] who observes:

> Were the present course of improvement to proceed without interruption from what the political economists call the disturbing causes—were luxury to be kept at a distance and a forced equality and contentment to be preserved by strong and universal exertion of the democratic principle—it would be demonstrable that the American constitution would last for centuries; or in other words until the country became so thickly peopled as to be subject to the evils resulting to England and the other dynasties of Europe. If a democracy be the best form of government, it would follow that a surplus population, that unhappy proof of its excellence, would but be called the sooner into existence. Then will come the real moments of trial, whether a democracy can exist under the pressure of want—whether those that have anything to lose, would not be at the mercy of those who have not. . . . Whether, when such a state of things is apprehended, a standing armed force, be it called what it may, would not be necessary, not to put down foreign invasion, but to put down domestic contentions.

In recapitulation Vigne writes:

> I advise you to go to America—at this period there is no country equally interesting, nor one so likely to remain so till it falls to pieces, probably within a half a century by its own weight. If you are an ultra Tory you will perhaps receive a lesson that will reduce you to reason—if you are a radical and in your senses as an Englishman and a gentleman you are certain of changing your opinions before you return.

This prophecy of the disintegration of the nation was constantly used by the enemies of reform in England, and indeed even the radicals at times feared that mere bulk would be America's undoing.

Henry Tudor,[2] a high-minded Englishman who had traveled widely, was another barrister who came to examine American

[1] Godfrey T. Vigne. Six Months in America. London, 1832, 2 vols.

[2] Henry Tudor. Narrative of a Tour in North America comprising Mexico, the Mines of Real Del Monte, the United States, and the British Colonies; with an excursion to the Island of Cuba. London, 1834, 2 vols.

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institutions. A confessed friend of reform in England, he finds much in the United States to commend, but little applicable to the case at home. In his *Narrative of a Tour in North America*, he writes:

I feel bound to acknowledge from all that fell within my observation, that the present political establishment of the confederation seems to suit, in every respect, the genius and character of the people for whom it has been framed. . . . While, therefore as a Philanthropist, I wish every continued prosperity to those existing institutions, I cannot but most devoutly wish from the same motives and suitableness and national sympathy, that those of our own happy country may never be impaired or contaminated by democratic principles or alterations, and rejoicing as I do in the American republic I still more rejoice in the monarchy of England.

There is unquestionably a preponderance of Toryism in the books of the period; few were sufficiently radical to find in American institutions balm to remedy the ills in England. In the great majority of the volumes cited, democracy had been tried and found wanting—even the conservative approval of certain of its fruits was coupled with the warning that it would not bear transplanting.

Charles Augustus Murray,[1] however, makes no serious study of democracy, either to test or to arraign it. In his amiable study of American life, he quite detaches himself from his background, refraining from comparisons and ignoring the possibility that any American idea could be adapted to meet conditions in England. Master of the household for Queen Victoria and an eminently fair and kindly writer, he writes as a generous patrician, criticising with reluctance and finding always something to commend. He points to "two principal a-priori tests of the permanent prosperity of a nation . . .; first, that every adult should be able to read and write; secondly, that every able-bodied man willing to work should find employment, at a rate of wage sufficient to insure him the necessaries of life." Both these conditions, the writer affirms, are found in

[1] The Honorable Charles Augustus Murray. Travels in North America during the years 1833, 1834, 1835 and 1836. London, 1839, 2 vols.

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America, though credit for so happy a condition is due not to democracy, but to opportunity.

The decade 1830–1840 is conspicuous in that it numbers among its travelers the great majority of really celebrated writers. In the entire half century of travel books, it is the rare exception that carries on its title page a name that means anything to posterity. There were, however, a few such, though they are rather outside the classification than of it. Were the books under consideration to be estimated with regard to influence, a first place would promptly be accorded Dickens *American Notes* (not, however, of the decade under discussion); and Mrs. Trollope's *Domestic Manners of the Americans* would also be near the top of the list. Though the *American Notes* rank first in the reading they received and in permanence as literature, they have no place really in a classification of writers regarding point of view or object. Neither indeed had Mrs. Trollope's[1] book in the thirties, wide as was also its sale, and great as was the American irritation at the volume. Harriet Martineau[2] and Captain Marryatt[3] were other bookmakers of the decade whose bookmaking was amply justified by earlier experience and success in writing, and whose volumes would have been read without regard to the interest in the subject. Miss Martineau's *Retrospect of Western Travel* succeeded her first *Society in America*, and it attempts to be a somewhat profound examination and analysis of America as she found it; her confessed sympathy with the cause of reform in England naturally leads her into the optimism she expresses. Of the United States Senate she writes:

> I have seen no assembly of chosen men and no company of high born invested with the antique dignities of an antique realm half so imposing to the imagination as this collection of stout-souled, full-grown men, brought together on the ground of their supposed sufficiency to work out the will of their diverse constituencies.

[1] Frances Trollope. Domestic Manners of the Americans. London, 1831, 2 vols.

[2] Harriet Martineau. Society in America. London and New York, 1837, 3 vols. Retrospect of Western Travel. London and New York, 1838, 3 vols.

[3] Captain Frederick Marryatt. A Diary in America, with Remarks on its Institutions. London, 1839, 1st ser., 3 vols; 2d ser., 3 vols.

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Captain Marryatt, who writes because America has not been properly "done," scores Miss Martineau for her many inaccuracies, ridicules Mrs. Trollope and her claims, and proves himself less a critic of America than an enemy of democracy. Maintaining that the latter is synonymous with mob rule he says: "I candidly acknowledge that the Reviewer is right in his supposition; my great object has been to do serious injury to the cause of democracy."

IV

The definite alignment of writers in the decade just discussed, their championship of distinct political dogma, wholly distinguishes that period from the succeeding one. For the years 1840–1850 the volumes produced show a marked freedom from bias, a genuine, earnest questioning, a dispassionate survey of the real America. The books themselves are of strikingly high average—dignified, restrained, sincere. They are neither consciously amusing nor satirical, concerned with foibles and absurdities, nor are they mere excuses to carry political propaganda. For the ten years previous, American conditions had served to state the proposition for the British partisan. Practically all that had been written, emphatic as it was, was a mere repetition of foregone conclusions; judgments had been extreme, intemperate, tinged rather with feeling than with reason. Most books exhibited the writer's power of argument rather than his power of description or analysis. In the succeeding decade, almost for the first time, the real America, the truth at the bottom of these highly colored statements, seemed to inspire travelers. Home politics cease for a time to affect travelers' descriptions. It is a time of acute investigation and careful report directed less to governmental forms than to industrial and social conditions.

The most voluminous writer of the time was James Silk Buckingham,[1] one time member of Parliament for Stafford,

[1] James Silk Buckingham. *America: Historical, Statistic, and Descriptive, viz.*: Northern States, 3 vols.; Eastern and Western States, 3 vols.; Southern or Slave States, 2 vols.; Canada, Nova Scotia, New Brunswick, and other British Provinces in North America, 1 vol.; together 9 vols. London, 1841–43.

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journalist, temperance reformer and public lecturer, whose nine volumes, somewhat ponderous and dull, still present for the localities visited (and he covered most of the United States east of the Mississippi) a picture and a storehouse of fact not excelled by any other writer. He came, as he himself modestly announces, to correct all the errors of previous travelers. His tone is temperate, his attitude reasonably critical and his judgments wholly the result of inquiry and study. Of the country at large he concludes: "There are hardly any bounds to the expectations that may be formed of its future greatness, if wisely and discreetly governed and if kept from the great scourges of society—luxury, intemperance and war."

George Coombe,[1] writer on education, philosophy, and phrenology, though opposed to democracy on philosophical grounds, comments on "an extraordinary activity of all the faculties," which he says is a striking feature in American life. This he chooses to attribute to "the realization of political equality." As to personal preference Coombe expresses himself with a frankness that carries conviction of honesty.

> I freely confess that while I lived under British institutions and enjoyed the advantages which they confer upon the upper and middle classes, I, like many others, had a less lively perception of their one-sided character. Even now, after contemplating the greatly superior condition of the masses in the United States, I am bound to state my conviction that this democracy in its present condition of imperfect instruction, is a rough instrument of government, and were I to consult my personal comfort merely, I should prefer to live in England.

Joseph Sturge,[2] philanthropist and abolitionist, after seeing much of the North and West, observes: "I do not think it out of place here to record my conviction that the great principle of popular control, which is carried out almost to its full extent in the free states, is not only beautiful in theory, but that it is found to work well in practise."

[1] George Coombe. Notes on the United States of North America during a phrenological visit, 1838-9-40. Edinburgh, 1841, 3 vols.

[2] Joseph Sturge. A Visit to the United States in 1841. Boston, 1842, 2 vols.

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Featherstonehaugh,[1] in a journey through the Slave states, bases convictions upon his investigations in the South, and his findings are completely at variance with those of the writer just quoted. The hopeful conclusions of Sturge were reached after a journey with Whittier through the northern and eastern States. The depressing pictures of Featherstonehaugh were painted after many unpleasant weeks spent largely on the western frontier of the slave states:

> How instructive is this lesson to the other governments of Christendom. . . . The melancholy truth seems too apparent, that when a people reject the experiences of the past, cast aside the guidance of the wise and the virtuous, and commit their honor and prosperity to the tumultuous passions of the multitude, they are sure to descend in the scale of true civilization more rapidly than they rose.

Two English travelers, Kennedy[2] and Warburton,[3] the former an agent of his government in Texas, and the latter a traveler who approached the United States by way of Canada, are frankly startled by the power and progress of the country. Nothing in the books of the period is more interesting than Warburton's expression of incredulous astonishment in *Hochelaga*. He had planned a leisurely tour through British America and the United States, but, after completing the Canadian part of it and crossing the border into New York, he was so overwhelmed with the limitless possibilities of the New World that he cut short his further travels and returned hurriedly to England. Amazed at the energy, growth and prosperity of the country and alarmed at the anti-British feeling he found, he undertook in his hastily written book to arouse his countrymen, to open their eyes to the danger in the west. Whether Warburton overstates his own dismay, one cannot say; counting on the characteristic complacency of his countrymen, it may have seemed necessary to use exaggeration.

[1] George William Featherstonehaugh. Excursion through the Slave States. London, 1844.

[2] William Kennedy. Texas: The Rise, Progress and Prospects of the Republic of Texas. London, 1841, 2 vols.

[3] George Warburton. Hochelaga; or England in the New World. New York, 1846, 2 vols.

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Most of the present generation have been brought up and lived in the idea that England is supreme in the congress of nations. I am one of that enormous class, long may it be a numerous one! But I say with sorrow that a doubt crosses my mind, and something more than a doubt that the giant son will soon tread on his parent's heels.

Almost morbidly he leaves in the reader's mind the fear "that they only wait for matured power to apply the incendiary torch of republicanism to the nations of Europe." Stirred as he is by the threat of this greater power, he yet clings to the consoling belief (almost an aphorism with British statesmen) that mere bulk would break the United States into fragments.

Many other writers could be cited whose acute observations are of very real historical interest. All bear out the generalization for the decade, that they are without political or commercial bias. Whenever it is necessary to discount the conclusions of a writer, it is a matter solely of the personal equation.

The last book of the period (again, a forerunner of the next) is Alexander Mackay's[1] *Western World*, which went through four British editions in 1850 and was reprinted in America. It was far and away the best book in description and analysis of America up to the time of Mr. Bryce's great work. Mackay's work resembles that of Basil Hall but is written from the opposite political viewpoint, that of an ardent radical. He was thoroughly alive to American crudities and vulgarities, but laughs with, rather than at, the Yankee who exhibits them. Maintaining that "England pays four and one-half times as much to be governed" as America, he asserts that the American system is wisely founded for

> encouragement of virtue rather than the repression of vice. They repudiated a system founded on the principles of suspicion and resistance, and adopted one based upon those of confidence and encouragement. . . . They thus regarded education in its true light—not merely as something which should not be neglected, but as an indispensable coadjutor in the work of consolidating and promoting their schemes.

[1] Alexander Mackay. The Western World; or, Travels through the United States in 1846–47. London, 1849, 3 vols.

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In such sentiments one finds again the defence of democracy. Indeed, Mackay's book is an earnest justification of the principle. At the end of a decade of unbiased observation, once more appears this champion of a cause—and a champion of sound mettle.

> Society in America started from the point to which society in Europe is only yet tending. The equality of men is, to this moment, its cornerstone . . . that which develops itself as the sympathy of class, becomes in America the general sentiment of society. . . . We present an imposing front to the world; but let us tear the picture and look at the canvas. One out of every seven of us is a pauper. Every six Englishmen have, in addition to their other enormous burdens, to support a seventh between them, whose life is spent in consuming, but in adding nothing to the source of their common subsistence.

V

As the half-century drew to its close, the mere observer in America disappeared. The books of the fifth period—from 1850 to 1860—return as in 1830–1840 to an examination of the institutions of America and a discussion of their value for Great Britain. A certain controversialism, an argumentative form, which betrayed the political missionary rather than the impartial traveler again mark the volumes. Once more, partisan feeling in England lessens the historical trustworthiness of the description. Although in the earlier period Tory influence and writing predominated, after 1850 the case was reversed and it was the over-zealous radical who was the offender. In spite of the intensity and zeal of the advocate, the books were of higher standard than in the early years. There was no longer a welcome or a reading for mere vituperation and ridicule. Writers of whatever tendency exhibited a certain general breadth in treating so-called American characteristics. As the facilities of travel improved, and the domain and power of the country increased, the British sightseer learned to discriminate between various local peculiarities and the national trademark he was prone to emphasize. Even the most earnest adherent of the old régime realized, with Mackay, that it was time "that portraiture succeeded caricature." As already stated, Mackay

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presented the best brief for democracy, though other travelers are not less ardent admirers of the American system. Baxter,[1] in his republished lectures at Dundee, says: "The American government is one of the most complicated yet ingenious and practically perfect that has ever been devised by the mind of man." In his enthusiasm he asserts the rise of the United States to be "the beginning of a new era in Government arrangements, the signal for despotic potentates to mark the advancing current in the stream of time."

And Phillippo,[2] an equally earnest sympathizer, after examining the effects of government on the people, remarks that "in a free country there is often much complaint with little suffering—in a despotism there is often much suffering with little complaint." The democratic principle, he maintains, "elevates the character and promotes the aspirations of the multitude—which gives freedom to subjects and stability to the state—makes masses endure adversity with higher courage and animates them in prosperity with a vigor never before equalled." Charles Mackay,[3] in song, poetry and after dinner speeches, outdid the American in laudation. In an eight months' lecturing tour, he covered much of the country and was most hospitably received. Indeed the warmth and kindness of his reception may have silenced all criticism, as it is said to have done for Thackeray. He made the journey, he says, to judge for himself "the results of the great experiment in self-government" in America, and he returned "with a greater respect for the people than when he first set foot upon the soil."

Among truly conservative writers were Sullivan, Chambers (the encyclopædist), Tremenheere and Senior, besides others of less importance.

Sullivan,[4] laboring heavily in his advocacy of Tory principles for Great Britain, writes:

[1] William Edward Baxter. America and the Americans. London, 1855, 1 vol.

[2] James Mursell Phillippo. The United States and Cuba. London, 1857, 1 vol.

[3] Charles Mackay. Life and Liberty in America; or, Sketches of a Tour in the United States and Canada in 1857–8. New York, 1857, 1 vol.

[4] Edward Sullivan. Rambles and Scrambles in North and South America. London, 1852, 1 vol.

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I never had the slightest penchant for republics; I left England strongly biased in favour of our government and institutions, and I returned with all my predilections strengthened by a comparison with those of our cousins in the West.

Yet although such was my feeling, there is no denying that many of their institutions are admirable and far better suited to their habits and wants than any grafted from the old country could possibly have been; and, on the other hand, most unprejudiced Americans admit that though a republic such as they possess, organized as it was, carefully and deliberately, by the most clear-headed and enlightened men the country has ever produced and aided by the enthusiastic support of the entire nation, may suit their peculiar tastes and ideas, yet that it does not at all follow that it would succeed in England, where it would most probably be the handiwork of hot-headed zealots, acting in opposition to a large proportion of the people, and where it must inevitably rise on the ruins of a constitution which centuries have identified with us, and which has become endeared to a large majority of the nation by the blood and talents of its best and noblest, through succeeding generations.

His book carries no conviction, though he does make an occasional observation of interest. With regard to party distribution in America he notes the reverse of the English situation.

In England the stronghold of Democracy is in the large towns, and aristocracy has its strongest supporters in the country. In America the ultra-democrat and leveler is the western farmer, and the aristocratic tendency is most visible amongst the manufacturers and the merchants of the eastern cities. The Western States are destined to play an important part in the future of the Republic; already their influence is felt on all important occasions.

Tremenheere,[1] in a scholarly examination of the Constitution, admits its ingenious devices and commends the theory, but is convinced that in practice it has already "debased the government," and that such a result was inevitable. Satisfied that his condemnation is convincing, he bases upon it his argument against the extension of the franchise in England. Of the American as he finds him he writes:

[1] Hugh Seymour Tremenheere. The Constitution of the United States compared with Our Own. London, 1854, 1 vol.

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His sympathies are already with us; we have but to acknowledge and respond to them. The violent and unscrupulous portion of the press in his country (the worst being conducted and inspired by renegades from ours) may, and doubtless does, produce a very different state of feeling and opinion in the numerical mass; but the expanded hearts and minds of the educated, the reflecting, the cultivated, in their various degrees, are untrammelled by any such unworthy influences and meet us fully half-way in any demonstrations of genuine respect and fraternal recognition. But in equal measure do their spirits revolt against assumption. And all the more keenly in proportion to their desire to be understood aright, do they feel the unkind criticism, the overcolored description, or the repelling sneer.

Senior,[1] a professor of political economy at Oxford, writes primarily of the influence and success of *Uncle Tom's Cabin* in England. The gist of his book was first printed in the *Edinburgh*, where the writer's criticisms were strictly censored. The editorial reader so jealously guarded his pages from Senior's sharper criticism, that the article first appeared divested of much of its sting. Such treatment is of course in striking contrast with the years in which the review dealt largely in scoffs and jeers at America and is significant of an attitude of justice and consideration. In book form the writer permits himself the freedom of statement which the magazine denied him. Writing of the men in public service, he says:

> What on this side the Atlantic are the prizes of public life, the high political and administrative posts, are generally left to the inferior men whose ignorance, violence or incapacity have led those who judge of America only through her public servants, to look on her with merited contempt and disgust.

The intolerance and arrogance of the British traveler, while on his tour, at all times and in the early years particularly, was a trial to Americans. They were constantly irritated by his condescension and egotism and indeed suffered under it. On

[1] Nassau William Senior. American Slavery: A reprint of an article on "Uncle Tom's Cabin," of which a portion was inserted in the 205th number of the *Edinburgh Review*; and of Mr. Sumner's speech of the 19th and 20th of May, 1856, with a notice of the events which followed that speech. London, 1856, 1 vol.

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the other hand, the vanity and bombast of the American, often a defensive armor, was merely amusing to the foreigner, and became a convenient target for ridicule. That conditions are changed is easily inferred from Senior's outburst:

> We have long been smarting under the conceit of America—we are tired of hearing her boast that she is the freest and the most enlightened country that the world has ever seen. Our clergy hate her voluntary system, our Tories hate her democrats, our Whigs hate her parvenus, our radicals hate her litigiousness, her insolence and her ambitions.

From such quotations and others of the period it is evident that no hostility, and no criticism, is satisfied with contempt and derision. The strength of American institutions, their endurance, their possible application to conditions in other continents, have been too strongly felt. One may deny their virtues and hate them vigorously; one may applaud them sincerely or even blatantly; but one does not scorn or ignore them.

VI

After 1860 such classification as this paper makes is impossible. Our own war and its aftermath brought questions which were peculiarly American and could have no bearing upon another nation. The Reform Bill of 1867 once accomplished in England, and nationality reëstablished in America, the period of the investigating theorist was over. He had come in various guises: in the early years as an expert in immigration for the farmer, later as an industrial expert and philanthropist to seek asylum for the laborer; in the thirties to assure the British populace of the success or failure of democracy in the United States; in the forties to find the real facts of American life in the only broad unbiased outlook, and, last of all, to make a test of American institutions and their applicability in Great Britain.

Under all conditions America was the stage, her countrymen and her institutions were the players, the British public was the audience, and the British traveler the interpreter. For the five decades examined, the unity of presentation for each period is

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of distinct historical importance. The individual picture is often misleading, it is the composite that is valuable. And yet of these various pictures of America, the composite they present can be fairly tested only in the light of the point of view of the artist. If the camera is focused to distort the image, as is easily possible—if it is so placed that the high lights illuminate the utterly unimportant things—or if, on the other hand, it is so advantageously placed as to flatter the object out of all resemblance to the original, then the composite itself is misleading. So again, the important thing is the point of view.

George Coombe in the preface to his volume in 1840 states well the difficulties of honest portraiture, and his preface may fittingly conclude the present paper.

> I regard it as impossible for any individual accurately to describe a great nation. The objects and interests are so vast compared with the capacities of one mind, that a whole life would not suffice to attain to truth in all points of detail and to logical soundness in all inferences. A certain extent of error, therefore, is unavoidable on the part of all observers who attempt to delineate so extensive a field. The only method by which philosophic minds can arrive at truth in regard to national character and institutions, is to analyze and compare the reports of numerous observers; each individual author being regarded as a single witness in a vast and complicated cause.

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THE FEDERAL RESERVE SYSTEM

NOW that legislation for the reform of our banking system stands as a *fait accompli*, it should be profitable to inquire to what extent, and in what manner, provision has been made for the realization of those aims, which, from the economic point of view, seem necessary as well as desirable in the organization of a good banking system. It is not the purpose of this article to present the political and legislative history of the new banking law or to indulge in prophecy as to the probable outcome of its particular provisions. The present inquiry is confined to the question: To what extent does the new law square with sound and comprehensive principles of organized banking?

To explain the viewpoint from which the analysis proceeds, let us review briefly the important ends which students quite generally concede should be considered in welding together banks into a system. The important service which banks render in the broad process of wealth production, grows out of their extension of credit facilities in the form of deposits and of notes. As the demand for these facilities varies absolutely from place to place and from time to time in the same place, as well as relatively between the two forms of credit with fluctuations in general confidence—because of the difference in the acceptability of notes as contrasted with checks—the fundamental desideratum is "elasticity." This means that wherever and whenever the demand for bank credit increases, such credit will, within the limits imposed by the necessity of maintaining adequate reserves, expand in corresponding degree. But elasticity means also that, when demand falls off, a prompt and adequate contraction will result as a matter of course; and that, when demand simply shifts from one form to another, the necessary transformation of credit can be effected with a minimum of friction. Such elasticity involves not only the power to expand credit but also the power to restrain expansion within

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safe limits. It involves as well the power to enforce contraction in response to falling demand.

As the expansion and contraction of credit is primarily a question of the relation between the credit and the underlying reserves, full elasticity can be attained only through the centralization, or "mobilization", of the reserves. With centralized reserves the variations in demand both from place to place and from time to time can be fully and economically met. On the other hand the transformation of credit from one form into another is largely a question of the particular system of note issue that may be provided by law. Furthermore, centralized reserves are effective only in so far as they are accessible. This requires that the individual banks must be able directly or indirectly to rely on such reserves when occasion demands. Means must be provided whereby the banks may resell or "rediscount" enough of their normal investments to permit each to strengthen its position as the need therefor may arise. In other words full elasticity of bank credit requires the mobilization of bank reserves; and, as an adjunct of centralized reserves, it requires also a system of rediscounting.

Bank credit, however, is being used to an increasing extent in the settlement of business transactions between individuals in widely separated communities. With a system of centralized reserves these transactions may be easily "cleared." Indeed the more completely reserves are centralized, the more entirely may intercommunity payments be resolved into mere bookkeeping transactions on the books of the agency controlling the reserves. Hence another end to be held in view in organizing the banks into a system is the establishment of an effective system of domestic clearings.

Owing to the importance of the exportation and importation of gold to the national credit structure, some means must be provided in the banking system for protecting the nation's gold reserves. As already indicated, such protection necessitates in the first instance a control of the credit that the country's reserves are carrying. But it requires further the possibility of influencing the foreign exchange market to such an extent that undesirable importation or exportation of gold

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may be discouraged, while, at the same time, desirable movements may be stimulated. This protection is possible, however, only when reserves are so mobilized that the central agency may, in ultimate analysis, dictate the terms on which credit can be extended or gold for export be obtained and induce the importation of gold that is necessary.

Another factor to be borne in mind in analyzing a new banking system is the necessity of providing for the transition from the system previously in force. In this connection the most difficult task in planning the Federal Reserve system was to secure the withdrawal of the inelastic, bond-secured notes issued by the national banks and yet avoid an undue contraction of the currency and the depreciation of the bonds held as the basis of the note issue. Another problem was involved in the transition from a system of scattered reserves with all the voluntary relationships that had been built up under it, to the desired system of centralized reserves.

I

The factor most largely responsible for the peculiar organization of the new system was the desire for the centralization of reserves. The plan adopted involves no absolute centralization of reserves but rather a district centralization with the possibility of effecting virtually complete centralization should the necessity therefor arise.

The holders of the centralized reserves are to be banks specially created for the purpose and known as Federal Reserve Banks. The law provides for from eight to twelve "federal reserve districts" in each of which is to be designated a "federal reserve city", in which the new banks are to be established. Each federal reserve bank may establish branches in other places in its own district and also in other districts should the reserve banks of such other districts be for any reason suspended.

Federal reserve banks are to be the banks of bankers. They must have a minimum capital of $4,000,000 which is to be subscribed in each district by the banks joining the system, although if the required capital cannot be obtained in that way it is to be made up by public or governmental subscription. Member-

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ship is voluntary, and is open to state banks and trust companies as well as to national banks. To be eligible, however, state institutions must meet the capital and similar requirements imposed on national banks in the communities where the state institutions are situated. Special inducements, such as the possibility of being empowered to do a trust-company business, to accept on commission bills drawn by clients for imports or exports, to lend in some cases on real-estate security, and to establish foreign branches, are extended to the national banks subscribing to the capital of the reserve banks. In addition to this, certain threats are made if they fail to join. They may lose their right to act as reserve agents for other banks, while a whole year of recalcitrancy involves the forfeiture of their national charters. Each member bank subscribes to the capital of its federal reserve bank an amount equal to six per cent of its own capital and surplus. The total capital above the minimum may increase or decrease with the accession or with the withdrawal of member banks. Member banks may not, however, either transfer or hypothecate the federal reserve shares that they own.

The government of a federal reserve bank is vested in a board of nine directors, divided by law into three classes, A, B and C, each class having three members. Members of classes A and B are elected by the member-banks, but only those of class A represent the banks. The members of class B are to represent the commerce and industry of the district. Those in class C are appointed by a central board known as the "Federal Reserve Board". This board designates one of its appointees as chairman, and he, by virtue of that designation, becomes also the "Federal Reserve Agent" for his bank and his district. A second member of class C is designated as deputy chairman. The method of electing the members of the board by the banks is carefully prescribed with the evident purpose of giving the small banks voice equal to that of their larger competitors.

Except for first incumbents the term of office is to be three years, one director in each class being annually replaced. Their qualifications are carefully prescribed. Directors in class B may be neither directors nor officers nor employees of any bank, while those in class C may not even hold stock in any bank.

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As the federal reserve banks are primarily public rather than profit-making agencies, their annual dividends are limited to six per cent per annum. Any excess above six per cent is to go, half to the surplus and half to the government, until the surplus reaches forty per cent, when the entire excess is to accrue to the government. The amount so accruing to the government is to be used at the discretion of the Secretary of the Treasury, to strengthen the gold reserve behind the "greenbacks" or to retire outstanding United States bonds. In case of liquidation, whatever is left of the surplus after deducting items justly chargeable against it goes to the government. The dividends to the shareholders of the reserve banks are, however, cumulative.

Coördinating and controlling the whole system is the "Federal Reserve Board." It is made up of seven members. The secretary of the treasury and the comptroller of the currency are members *ex officio*. Five members are appointed by the president by and with the advice and consent of the Senate. Not more than one member of the board can come from a single federal reserve district. At least two of the presidential appointees must have had banking or financial experience, but no member of the board may be an officer, director, or stockholder of any bank. Except for the *ex officio* members, and for the first incumbents, whose terms will run respectively, two, four, six, eight and ten years, the term of office will be ten years. But the president may remove members for cause. While the secretary of the treasury is the *ex officio* chairman of the board, the president is empowered to name one of his five appointees as "governor" and another as "vice-governor." The governor and vice-governor are the chief executive officers of the whole system.

The federal reserve board is an unusually powerful supervisory and regulating body. It may suspend or remove any officer or director of a federal reserve bank; it may require the writing off by such bank of its bad debts; and may suspend a federal reserve bank or take it over for purposes of reorganization or liquidation. It may also readjust or abolish altogether the classification of central reserve and reserve cities.

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The member-banks are represented in the central management by a "Federal Advisory Council" made up of one representative from each federal reserve district chosen by the board of directors of the federal reserve bank. This council meets quarterly at Washington and at such other times and places as it may choose. While patterned after the stockholders' committee of the *Reichsbank* it is even less powerful than its German prototype. It may merely call for information from, and advise with, the federal reserve board.

To effect the desired centralization of reserves, the federal reserve banks are authorized to receive deposits from member banks, from the United States government, and, solely for exchange purposes, from each other. Deposits from private individuals may not be accepted. The secretary of the treasury is authorized to use his discretion in employing the federal reserve banks as depositories for government funds. In view of the evils disclosed by the independent treasury system in the past, it is hardly conceivable that he will fail so to employ them when once the system is well established. Member-banks, on the other hand, are required to keep a considerable proportion of their lawful reserves on deposit in the federal reserve banks. The exact proportions vary slightly for the central reserve city, the reserve city, and for the so-called "country banks;" but at the end of three years these proportions are respectively seven-eighteenths, six-fifteenths and five-twelfths, while an additional five-eighteenths, four-fifteenths and three-twelfths, respectively, must be kept in the member-banks own vaults or in its federal reserve bank. While a minimum of one-third of the required reserves must be kept in the member-bank's own vaults, from one-half to two-thirds of the total reserves will ultimately be centralized in the federal reserve banks.

The transfer of the required reserves by the member banks to the federal reserve banks is spread out over a period of three years to facilitate the transition from the "scattered reserve" system to the centralized system. A sudden withdrawal of the reserves from the existing reserve agents would bring about a serious contraction of credit. In order further to relieve the strain of transition the law permits the member-banks to pay

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one-half of cash reserve installment during the three-year period, in paper eligible for rediscount.

II

Let us now consider the provision made in the new law for insuring the "elasticity" of bank credit. This, as will be recalled, concerns the expansion and contraction of deposits and of notes in response to fluctuating demand.

The expansion of deposits has never given serious difficulty. The problem here is rather to restrain expansion within safe and reasonable bounds, maintaining a proper relation between reserves and liabilities. The basic units of the system, namely the member-banks, are, within the limits prescribed by the national banking law with respect to loans to individuals etc., free to expand deposits until their reserves fall to the prescribed minimum. In the reserve prescriptions a distinction is made between "demand" deposits and "time" deposits, the demand deposits being those payable, with or without notice, within thirty days, and the time deposits being those payable beyond thirty days. For all member-banks the reserve required against time deposits is five per cent. For demand deposits the requirements are eighteen per cent, fifteen per cent and twelve per cent respectively for banks in central reserve cities, in reserve cities, and in other places. As the deposits in the federal reserve banks themselves constitute the reserves for a considerable portion of the deposit liabilities of member-banks, the reserve requirements for the federal reserve banks are properly more exacting. Federal reserve banks must hold at least thirty-five per cent in gold or lawful money against their deposit liabilities. As the purpose of prescribing reserves is to check expansion, the banks are prohibited from making new loans, and incidentally from paying any dividends, when reserves fall below the prescribed percentages. Yet in order that the reserve requirements may not constitute an impassable "dead line" irrespective of the emergency, the federal reserve board is authorized to suspend all the reserve requirements for a period of thirty days and, if necessary, to renew the suspension for periods of fifteen days. But to prevent this emergency

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expedient from resulting in turn in the evil of inflation, it is provided that when the federal reserve board suspends the reserve requirements it must levy a graduated tax on the amounts by which the reserve required may be permitted to fall below the specified level, and the reserve banks must then add such tax to the discount rates established by the federal reserve board. A more adjustable check on expansion that can be applied before reserves drop to the danger point is found in the authority vested in the federal reserve board to review and to determine the rates of discount which the federal reserve banks may establish. How efficacious this authority will be remains to be seen. Much will depend upon the extent to which the discount rates of the federal reserve banks can be made to control the general market rates in their several districts.

The expansion of notes is more carefully controlled. Two kinds of notes are provided for. The first grows out of the exigencies of the existing system of bond-secured currency. As explained above, it was necessary to protect the bond investments of the national banks and at the same time to guard against the possibility of a sudden contraction of the currency. Hence it is provided that the federal reserve banks may be compelled to purchase from the national banks, to the amount of $25,000,000 a year, the bonds previously held to secure circulation. These bonds the reserve banks may deposit with the comptroller, and on the basis of them issue their own notes, by observing the same conditions that were prescribed for the national banks, with the single exception as to the limit of such issue. These notes, however, unlike the second kind presently to be referred to, are the obligations of the federal reserve banks themselves. They can obviously be no more elastic than the national bank notes themselves have been. As a matter of fact, they constitute only a temporary element in the system.

Should a federal reserve bank prefer not to avail itself of the privilege of issuing notes based on bond security, it may, with the permission of the federal reserve board, turn over the two-percent bonds with the circulation privilege, but against which no circulation is outstanding, and get in exchange from the secretary of the treasury one-half of the amount in one-year,

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three-percent United States gold notes and one-half in three-percent gold bonds. But at the time of making the exchange the federal reserve bank must bind itself to purchase at the maturity of the notes an equal amount for gold, if so requested by the secretary of the treasury, and to renew the obligation annually for a period of thirty years. The significance of this unique provision lies of course in the availability of the one-year notes as quick assets. But, should it so desire, the federal reserve bank may with the approval of the federal reserve board, exchange the notes for more three-percent bonds. These bonds have not, of course, the circulation privilege.

The elastic notes in the new system are known as "federal reserve notes." These are the obligations of the United States government itself. They are issued at the discretion of the federal reserve board, through the federal reserve agents, to the federal reserve banks. The federal reserve banks pay the notes on demand to the member-banks from which they reach in turn the general public. The denominations of the notes are five, ten, twenty, fifty and one hundred dollars. All the notes must bear the distinctive letters and serial numbers which have been assigned by the federal reserve board to the reserve banks responsible for their issue. They are receivable at par by the reserve banks and by the member-banks, and also by the United States government for all public dues. They are not legal tender in payments to individuals; but this will not seriously influence their general acceptability. They are redeemable in gold at the treasury at Washington, and in gold or lawful money at any of the reserve banks. Furthermore they constitute a first lien against the assets of the reserve bank through which they are issued. Safer notes could hardly be imagined.

Prepared notes are kept on hand in subtreasuries or mints. The only formalities to be observed by the federal reserve banks in obtaining them are to have on hand the required reserve and to turn over to the federal reserve agent an amount of collateral, made up of notes and bills accepted for rediscount equal to the sum of notes desired. The federal reserve board may call for more collateral if that should be deemed necessary.

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The point is, however, that the major portion of the reserve banks' normal investments become thoroughly acceptable cover for note issue. The transformation of credit from deposit form into note form ought not therefore to be a matter of difficulty.

To restrain note-expansion within due bounds the federal reserve banks are required to hold a reserve in gold of forty per cent against their federal reserve notes in actual circulation which are not already offset by gold or lawful money that has been turned over to the federal reserve agent for the purpose of retiring notes. A part of this gold reserve must be deposited with the United States treasurer. How large this part shall be is left to the determination of the secretary of the treasury, but it must in any case be not less than five per cent. But here, too, a more adjustable check is provided in the authority vested in the federal reserve board to grant in whole or in part, or to reject altogether, the application of a federal reserve bank for notes, and to fix the rate of interest on the amount that it does grant.[1] Considering the fact that the federal reserve board is the ultimate note-issuing authority, its power to fix interest rates on note issues is likely to be much more significant than its power to determine ordinary discount rates.

As in the case of deposits, so in the case of notes, in order to prevent the reserve requirements from acting under all circumstances as a "deadline," authority is granted to the federal reserve board to suspend the reserve requirements for thirty days and to renew the suspension for periods of fifteen days. But in order that needed expansion may not degenerate into out-and-out inflation, the federal reserve board is required to establish a graduated tax of not more than one per cent per annum on the deficiency in the reserves below forty per cent and above thirty-two and one-half per cent, and of not less than one and one-half per cent per annum on each two and one-half per cent that the reserves diminish below thirty-two and one-half per cent. Furthermore, to insure that this

[1] In an article in the *North American Review*, for October, 1913, Mr. Paul M. Warburg criticizes the arbitrary power granted to the federal reserve board over note issues. The probability is, however, that the provision for a possible interest charge on note issues was regarded as an emergency expedient to prevent inflation.

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tax also will have the proper discouraging effect on the ultimate borrower, it is required that, while in first instance the tax is paid by the federal reserve bank concerned, the bank itself must add an amount equal to the tax to the rates of interest fixed by the federal reserve board. Thus while expansion of notes to meet real demand is provided for, the necessity for guarding against overexpansion has not been neglected.

The law contains a series of provisions designed to insure contraction of notes when demand falls off. The notes may not be counted as lawful money for reserve purposes either by member-banks or by reserve banks. It is therefore to the interest of a member-bank to deposit in its reserve bank as speedily as possible any and all of the federal reserve notes that it receives as deposits. There is a certain inconsistency here, since deposits in the reserve banks may, and indeed to a certain extent must, be regarded as reserves by the member-banks. This inconsistency, however, as in the case of the provision for a possible interest charge on note advances, finds its explanation in the desire to exert upon the notes such pressure as is considered necessary to enforce their redemption. The reserve banks in turn are not only specifically required to return each other's notes for redemption, but the paying-out by one reserve bank of the notes of another reserve bank involves a penalty of ten per cent of the amount so paid out. The reserve banks must also reimburse the treasury for notes redeemed there; and if in redeeming such notes the treasury paid out gold or gold certificates the secretary may demand reimbursement in like funds. The notes received by the treasury otherwise than for redemption may be exchanged for gold out of the redemption fund or may be simply returned to the issuing bank for the credit of the United States. The results of these alternatives may or may not be the same. Redemption in gold, on the basis of forty-percent reserves, means a contraction of $250 in credit for each $100 worth of notes redeemed. Returning the notes for government credit means simply a transformation of credit from note form into deposit form. As the reserve required against deposits is smaller than that required against notes, the net result of this alternative may be further expan-

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sion rather than contraction. Still the result is the same if the gold taken from the redemption fund is immediately put back into the banks. In both cases, however, there is the initial redemption, which is the important consideration. In the case of redemption in gold, the action can be made more than doubly trenchant simply by holding the gold in the treasury. Should reserve banks desire of their own accord to reduce their note liabilities, they may do so through note and money deposits with their several reserve agents. Contraction of notes in response to falling demand would seem therefore to be reasonably assured.

III

Consideration should now be given to the plan by which the new system makes the centralized reserves and the notes of the reserve banks available to the member-banks. First it may be noted that the deposit balances in the reserve banks due to member-banks are, within the limits already noted, to be counted as reserves by the member-banks. This is of course a necessary corollary of centralized reserves. These deposits may be checked against by the member-banks or be simply drawn down in reserve notes or lawful money. The important consideration for the member-banks is therefore the maintenance of an adequate balance with the federal reserve bank.

This is made possible by provisions for re-discounting. With the indorsement of a member-bank, the federal reserve bank may discount for such member-bank notes, drafts, and bills of exchange arising out of actual commercial transactions. The federal reserve board determines in general the character of such paper. But the statute provides that paper secured by agricultural products or other goods and merchandise is not to be considered ineligible for rediscounting. On the other hand, notes and bills covered by or put out for carrying stocks and investment securities, except notes and bonds of the United States government, are expressly declared ineligible. The obvious purpose of the discrimination against investment and similar paper is to discourage security speculation. This appears needlessly harsh. Bills acceptable for rediscount may

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not run longer than ninety days; but here too an exception is made in favor of the rural borrower, in that bills issued for agricultural purposes and those based on livestock may have a six months' maturity. The amount of these long-time bills, however, must be limited to such a percentage of the capital of the reserve bank accepting them as may be determined by the federal reserve board. In order to control the utilization of the advantages of the new system by banks which are unwilling to assume corresponding obligations, it is provided that, in applying for or receiving discounts, a member-bank can act for a non-member only with the express permission of the federal reserve board. On the whole, therefore, it may be concluded that as long as a member-bank keeps the required proportion of its reserves in lawful money in its own vaults, the question of obtaining hand-to-hand money or that of strengthening reserves is simply one of having on hand an adequate supply of bills acceptable for rediscounting.

In connection with rediscounting, however, one important question remains. This relates to the provision made for one reserve district to get the advantage of possibly redundant reserves in other districts. Students generally agree that nothing is so effective in bringing about a free flow of funds as an open discount market. With an open market, under a system of centralized reserves, local banks need turn to the central banks only when the credit on the basis of a given ratio of reserves has been entirely absorbed. Each bank buys or sells according to its own needs. If the paper available be of the proper character, and if the inter-banking relations are such as to inspire the necessary confidence, this free flow of funds may not only characterize the country as a whole, but may also enter as an important possibility in international operations. Understanding the advantages of an open market, the framers of the law have endeavored to provide at least some of the facilities necessary to its creation. Member banks are permitted to "accept" on commission, drafts or bills of exchange growing out of exports or imports, having not more than six months sight to run. The amount so accepted, however, is limited to half the bank's paid-up capital and surplus. For bills with strong banks as the

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acceptors there ought to be a wide demand. Such bills ought to flow wherever the rate of discount is lowest. To facilitate this dispersion, the law permits the federal reserve banks to discount these acceptances when they have the indorsement of at least one member-bank. But should it be impossible to build up an open market, or should the possibilities of such a market prove at any time inadequate, there is the provision that the federal reserve board may permit, and on vote of five members may compel the reserve banks to rediscount for each other. Moreover, the federal reserve board fixes the rates at which such rediscounts are made. Thus under a system of district centralization the effort is made to get the advantages of complete centralization.[1]

IV

Centralization of reserves involves also a well-organized system of domestic clearings. This was not overlooked in planning the new banking system. As clearing involves the balancing of credits against debits, in the absence of direct relations between debtors and creditors the process can be executed only through the mediation of an agency standing between them and acting for both. Hence in the federal reserve system the federal reserve board may in first instance require each reserve bank to act as a clearing-house for its member-banks, and it may also permit the reserve banks, for exchange purposes, to carry accounts with each other. The reserve banks must receive at par all remittances drawn on their own depositors that may be sent in for collection by member-banks and other reserve banks. Furthermore, there is the interesting provision that one reserve bank may send as a credit to a second reserve bank remittances drawn against a third reserve bank or its member-banks. The object of this provision is to permit three-cornered exchange whereby a given bank liquidates its indebtedness to a second

[1] Mr. Warburg, in the article referred to above, contends that with as many as twelve reserve banks, with possibly different discount policies, rates etc., a large discount market could not develop. Moreover, he believes that the arbitrary power over discount rates vested in the federal reserve board will prevent the development of a free and "natural" market even between the larger centers. Mr. Warburg's contention was that not more than four reserve banks should be established.

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bank by sending a credit payable at a third. The whole system of charges for such clearings is in general under the control of the federal reserve board. By implication, however, member-banks may not charge their patrons more than the actual expense involved in collecting or remitting funds, or in supplying exchanges. To systematize the clearings between the reserve banks themselves it is provided that the federal reserve board may act as the clearing-house for them or it may designate one of the reserve banks to act in that capacity. The basis of an effective clearing system has thus been provided.

V

Important provisions remain to be noted in connection with the foreign exchanges and the international movements of gold. Most of the foreign trade of the United States has heretofore been financed by foreign bankers. The new system permits the home institutions to enter the field for this business. As noted above, member-banks are allowed within certain limits to accept on commission drafts and bills of exchange growing out of exports and imports, and these may be sold in the open market or ultimately rediscounted at the federal reserve banks. National banks with a capital and surplus of $1,000,000 or more may, with the permission of the federal reserve board, establish branches abroad. Similarly the reserve banks, when duly authorized, may open accounts in foreign countries and may establish agencies for purchasing, selling and collecting bills of exchange bearing at least two names and maturing within ninety days. But the extent to which American bankers will be able to supplant the foreigner will depend, of course, largely upon the acceptability of bills drawn in dollars. This will depend, among other things, upon the market rate of discount in the United States in competition with the rates abroad.[1] If the new system successfully establishes American credit in the world-markets, a large part of the tribute that American commerce now pays to foreign bankers will stay at home.

The provisions bearing on the foreign exchanges and gold

[1] *Cf.* Warburg, *loc. cit.*

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movements are of especial interest. In addition to the dealings with their member-banks, the reserve banks are permitted to purchase and sell in the open market, at home and abroad, cable transfers of funds, bankers' acceptances and bills of exchange of the kind that are eligible for rediscount, with or without the indorsement of a member-bank. Furthermore, they may deal in gold coin and bullion, at home and abroad, may make loans thereon, may exchange federal reserve notes for gold in bullion and in coin, or for gold certificates, and they may contract for loans of gold. Finally, under rules prescribed by the federal reserve board, they may buy and sell, at home and abroad, United States bonds, and notes, bills, bonds, revenue warrants etc. of the stated and minor political divisions.

The significance of these provisions can hardly be overstated. Taken together, they mean that in the foreign exchange market the reserve banks will not only become competitors of existing banks but also that they are likely to become the controlling factors in that market. In normal times, owing to their extensive resources and wide powers, they will markedly influence the general drift of the exchanges, while in times of strain they ought to be in position to render most helpful aid. Their buying of bills in the open market will enable them to support the demand side when rates are low, and will at the same time enable them to throw exchange on the market when rates are high. European experience has shown this to be a most useful expedient in checking unnecessary gold movements. Moreover, the full authority granted to the reserve banks to deal in, to borrow, or to make loans against gold at home and abroad and to buy and sell governmental securities, insures the possibility of creating credits that can be used either as an offset for debts—the payment of which would otherwise necessitate gold exports—or as a means of obtaining gold to strengthen reserves at home. Furthermore, through the final control of discount rates, if that control can in practice be made effective, the federal reserve board acting through the reserve banks may check the outward flow of gold. If the nation's credit-position is strong enough, it may even attract gold to the home market from abroad. As a final guarantee to the world of the solidity of the whole sys-

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tem, the gold standard is reaffirmed and the secretary of the treasury is authorized to purchase gold if necessary with one year, three-percent gold notes or to borrow it on the security of United States bonds.

VI

From what has been adduced in this compressed analysis of our new banking system, it will justly be concluded that the fundamental elements of that system grew out of a sound understanding of the needs to be met. Full elasticity and ready convertibility of the two forms of bank credit, the effectiveness and economy of centralized reserves, the necessity for a system of rediscount, the desirability of well organized domestic clearings, the importance of international exchange operations and the protection of the gold reserves—all these important aspects of banking organized on a national basis were accorded consideration in the measures embodied in the new law. Whether the proposed expedients will in full measure attain their ends must be determined by experience. In the bill formally establishing the system the caviling critic will be able to find imperfections, repetitions, inconsistencies and ambiguities. But to the economic student familiar with American legislative methods the federal reserve system will stand as a remarkable achievement in constructive legislation.

E. E. AGGER.

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UNFAIR COMPETITION[1]

A STUDY OF CERTAIN PRACTICES AND THEIR RELATION TO THE TRUST PROBLEMS IN THE UNITED STATES I

"UNFAIR competition" is a term difficult either to define or explain. To different individuals it connotes different things. The lawyer's view of unfair competition, for example, is based upon the statutes and the decisions of the courts; that of the economists upon economic consequences and results. To the lawyer, a method which is legal is not unfair. To the economist, on the other hand, legality *per se* is no criterion of fairness. The opinions of the lawyer and of the economist are therefore likely to be at variance in the case of more than one method. This divergence of views will appear more clearly in the course of this article which is written from the standpoint of the economist.

In order to determine the meaning of "unfair competition" from an economic point of view it is of service to consider first the meaning of "fair competition." Fair competition in an economic sense signifies a competition of economic or productive efficiency. On economic grounds an organization is entitled to remain in business so long and only so long as its production and selling costs enable it to hold its own in a free and open market. As the productive and selling efficiency of competitors increases, marginal concerns which are unable to keep pace will gradually lose their market and ultimately discontinue business. But in such an elimination there is nothing not economically fair to all concerned. If all have an equal chance to survive, it is eco-

[1] The subject of unfair competition will not be considered from the standpoint of any abstract ideal either of justice or of right and wrong. We have not yet arrived at the point where it is possible to say that competition in business is right and that combination and monopoly are wrong. Nor as yet may we assert the reverse. This discussion has merely assumed that the prevalent opinion of the day favors competition and opposes combination and monopoly. Were this situation reversed, many of the views here expressed could not be regarded as sound.

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nomically proper that those failing through lack of efficiency should be destroyed. The community is entitled to the most efficient service that can be given. Inefficient organizations constitute a burden to the community and no justification can be found for their continued existence.

Unfortunately competition is not always conducted under such conditions of equal opportunity in a free and open market. Productive and selling efficiency alone do not always permit an organization to survive, owing to the introduction of methods and practices which destroy the freedom of the market, which hamper the productive or selling efficiency of other units, and which prevent efficient potential competitors from becoming actual rivals. Such artificial restrictions are clearly unfair, since they hinder or prevent other organizations from competing to the extent which their productive and selling efficiency may warrant. If there be a sound basis for competition, it lies in the preservation of the economically efficient and the destruction of the inefficient. It follows that methods which destroy the efficient along with the inefficient are economically unjustifiable and must be regarded as unfair.

Nearly every large combination or trust (and frequently smaller ones also) reveals at some point in its history one or more instances of the use of such unfair methods. These methods cannot always be clearly differentiated from each other. Frequently they shade into one another. Often they are supplementary. In this discussion an attempt will be made to separate and classify them according to their elemental features. It will be indicated when two or more are used in conjunction or when one shades into another. Classified according to their elementary characteristics, it is possible to distinguish the following eleven forms of unfair competition:

I. Local price-cutting.
II. Operation of bogus "independent" concerns.
III. Maintenance of "fighting ships" and "fighting brands."
IV. Lease, sale, purchase or use of certain articles as a condition of the lease, sale, purchase or use of other required articles.

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V. Exclusive sales and purchase arrangements.
VI. Rebates and preferential contracts.
VII. Acquisition of exclusive or dominant control of machinery or goods used in the manufacturing process.
VIII. Manipulation.
IX. Blacklists, boycotts, white-lists etc.
X. Espionage and use of detectives.
XI. Coercion, threats and intimidation.

These various forms will be considered in order.

I. *Local price-cutting*

Local price-cutting has been a frequent and familiar weapon of the trusts. As here used the term means that an organization cuts the prices of its products to a point below the cost of production in one or more of the localities where competition exists. The loss entailed is usually recouped by the profits from the high prices charged in those regions where competition is either insignificant or non-existent. This method has been employed repeatedly by large and powerful organizations. The ultimate outcome in such cases, with but few exceptions, has been the destruction and elimination of competition in those regions where the method has been employed.

Probably the best examples of the operation of local price-cutting are to be found in the histories of the old oil and powder trusts. In the case of the former organization, the prices charged in various localities appear to have been definitely governed by the percentage of competition to be met in each section. An examination of the tables of prices, profits and percentages of competition presented in the *Brief for the United States* in the suit against the Standard Oil Company shows that the prices and profits on oil as between various localities were roughly high or low according as the percentages of competition were low or high. On October 15, 1904, the Standard Oil Company's profits and losses on white-water illuminating oil ranged from as high as 6.48 cents per gallon profit in Alberquerque, New Mexico, with 17 per cent of competition, and 6.1 cents per gallon profit in Spokane, with no competition, to as low as 3.16 cents per gallon loss in Los Angeles with 33.4

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per cent of competition and 1.35 cents per gallon loss in New Orleans with 51.2 per cent of competition.[1]

From the consumer's standpoint it is desirable that a concern shall sell its products at as low a price as possible. But this fact does not justify local price-cutting. Any gain to the consumer under this method, in addition to causing a corresponding loss to some other consumer, is obviously of a temporary character. When the organizations against which a campaign of local price-cutting is directed are driven from the field, their business is absorbed by the price-cutting concern. Prices then resume a level at least as high as under fair competition. Frequently they reach an even higher one. Efficient or inefficient, no organization can long survive a program of local price-cutting. In the case of the inefficient, the unfairness is of little moment. Such an organization is doomed whenever the efficiency of other concerns becomes sufficiently great. The economic unfairness of the method lies in the destruction of efficient organizations. If the price charged for a given commodity were based upon production costs, every organization able to attain a certain degree of productive efficiency could compete. Every concern would have a reasonable chance of surviving. Only the inefficient would be eliminated. Under local price-cutting the prices made by the price-cutting organization have no relation to production costs. Productive efficiency is therefore no defence to competitors against such an attack. This quality alone will not enable them to survive. Possibly it may prolong the struggle. Yet even this may be doubted. It is not unlikely that the greater the productive

[1] Standard Oil Company *v.* United States of America. In the Supreme Court of the United States, Brief for the United States. vol. ii, pp. 432–436. A copy of these tables will be found in Wm. S. Stevens' Industrial Combinations and Trusts. For further examples of local price-cutting by the Standard Oil Company, see Brief for the United States, above cited, vol. ii, pp. 428–500. (*Cf.* also United States of America *v.* E. I. Du Pont de Nemours and Company *et al.*, United States Circuit Court for District of Delaware, Pet. Rec. Testimony, vol. i, pp. 99–104, 122–132; United States of America *v.* American Coal Products Company, Barrett Manufacturing Company *et al.*, Petition in Equity, U. S. D. C. for the Southern District of New York, p. 30; United States *v.* American Sugar Refining Company *et als.*, Original Petition, U. S. C. C. for the Southern District of New York, pp. 98–99.

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efficiency of competitors, the more strenuous will be the warfare waged against them.

It may be argued with considerable force that an organization ought not to be deprived of the use of local price-cutting. Assume that a large trust discovers that it is losing business in a given locality to concern "A." Because of its efficiency, "A" has been able to reduce its prices even below those of the trust. Ought not the latter then to be allowed to cut its prices in "A's" locality in order to regain its lost business? To answer this question in the affirmative, is to overlook the serious general consequences of the use of this method. Price-cutting in selected localities is too dangerous a weapon to be permitted to any organization. If allowed under extenuating circumstances like those supposed above, there is not and cannot be any guarantee that it will not be employed for other purposes, among which the chief would be to destroy all competition. In the above illustration the only method by which the trust should be permitted to regain the business lost to "A," is by a general instead of a local price-cut. Then if it cuts prices below the cost of production in "A's" territory, it must do the same throughout the country. In such a situation every dollar lost by "A" in retaining its business would mean a thousand lost by the trust. "A" has a reasonable chance of surviving. Strong probability exists that it can endure this state of affairs for as long a period as the trust. If the trust's efficiency so increases that without loss it is able to reduce its prices throughout the country to a level below that of "A's" costs of production, then "A" may be forced to the wall. But such an elimination would not be unfair, since it is based upon the survival of the efficient.

II. *Operation of bogus "independent" concerns*

Bogus independent concerns have been employed by a large number of organizations.[1] The avowed purpose of the "yellow

[1] *Cf.* allegations in United States of America *v.* National Cash Register Company etc., Petition U. S. C. C. for the Southern District of Ohio, Western Division, pp. 20–21; Report of the Commissioner of Corporations on the Tobacco Industry, part i, pp. 20–21; *ibid.* on the International Harvester Company, p. 296 *et seq.*; United States

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dog" companies employed by the Powder Trust was to enable that organization to retain as much as possible of the trade in a given locality. When in one section or another, lost business could not be regained in any other way, the "yellow dog" company would be called into service. The trust would refuse it recognition and inform the trade that its goods were poor and of a low grade. The prices of trust brands would not be lowered, and the "yellow dog" by cutting prices would get the business and thus destroy the independent trade. The combination, it is needless to say, supplied the "yellow dog" with powder.[1]

In some cases a bogus concern may be instructed to make no calls except upon the customers of independents. In others it may be prohibited from selling to customers of the trust at less than the regular market price. In still other instances it may be absolutely forbidden to sell to the trade of the trust under any circumstances.

As a method of competition, the bogus independent in two respects resembles local price-cutting. In order to secure business the bogus concern generally cuts its prices to a point below the cost of production. This cut is essentially local in character by reason of the fact that such an organization usually operates at any given time in a rather restricted area.

An important point of difference between the two methods lies in their relative efficacy. In destroying competition, the bogus independent is decidedly superior to local price-cutting. As previously indicated, the trust, when it operates bogus organizations, need not, and generally does not, cut its own prices.

of America *v.* Corn Products Refining Company and others, Petition in Equity, U. S. D. C. for the Southern District of New York, p. 23; United States of America *v.* General Electric Company and others, In Equity, U. S. C. C. for the Northern District of Ohio, p. 34; United States of America *v.* Eastman Kodak Company *et al.*, Petition in Equity, U. S. D. C. for the Western District of New York, pp. 29–30; United States *v.* American Sugar Refining Company, Original Petition, *cit. supra*, p. 148; Standard Oil Co. *v.* United States, Brief for United States, *cit. supra*, vol. ii, p. 523 *et seq.*; United States *v.* E. I. Du Pont de Nemours and Company, Pet. Rec. Testimony, *cit. supra*, vol. ii, p. 685 *et seq.*

[1] United States *v.* E. I. Du Pont de Nemours and Company, Pet. Rec. Testimony. *cit. supra*, vol. ii, p. 685.

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In spite of this, it will usually retain at least a few and, in some cases, many of its customers. On this portion of its business it will suffer no loss. On the other hand, when local price-cutting is used, not only will the trust retain practically all of its customers, but it will also secure new ones. Upon every portion of this business, however, it will meet with a loss. It follows, therefore, that the total resulting cost to the trust is likely to be much heavier than if bogus independents are employed.

A second point of difference between the two methods lies in the fact that bogus concerns offer facilities for obtaining information in regard to the business of competitors which are not afforded by local price-cutting. Disclaiming all connection with the trust, a bogus organization is frequently in a favorable position to learn the names of the customers of independent concerns, the character of their business, and their manufacturing and trade secrets. The information thus acquired is supplied to the parent organization with resulting advantage to the effort to destroy independent business.

The unfairness of competition conducted by means of bogus independents is evident. Where this expedient is adopted, productive efficiency is less likely to enable a competing organization to survive than where local price-cutting is employed. Such efficiency is less of a defense against the former than against the latter method, because the operation of bogus concerns is less expensive to the trust than is local price-cutting, and because they serve as a means of acquiring information in regard to the business of competitors.

III. *Maintenance of "fighting ships" and "fighting brands"*

Closely related to local price-cutting and to the operation of bogus independents, is the use of special devices for the purpose of destroying competition. Prominent among these, are the so-called "fighting ships" employed by the various steamship conferences.[1] The "fighting ship" is called into service when a new line is started in a trade nominally controlled by conference lines. As soon as the new competitor announces a

[1] For explanation of the steamship conference, see *infra*, sec. vi.

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sailing date, the conference issues a circular to shippers advertising a steamer to sail upon the same date. The conference circular usually offers a rate below the actual cost of transportation. The object is to prevent the new competitor from securing a cargo.[1] An interesting development of this idea is found in the *Syndikats-Rhederei*. This organization is a corporation through which are operated the fighting ships of the six largest Hamburg steamship companies engaged in the extra-European trade.

The *Syndikats-Rhederei* is a vessel-owning company with a capital of $1,428,000. Nominally it is engaged in commercial transportation enterprises. Primarily it is a defensive corporation, the capital stock of which is owned in various proportions by the following companies: Hamburg-American, Hamburg-South-American, German Steamship Company, C. Woerman, German-Australian Steamship Company, and the German East African Company. The proportion of shares held by each is determined with reference to the tonnage of each line. Four small and relatively inexpensive ships were purchased. These with others chartered when the need arises are "hired out" to meet competition and to make it unprofitable. When not engaged in a fight, these steamers find employment upon regular time charters.[2]

The United States government has alleged that the Thread Combination makes use of "fighting brands" of thread. It is charged that when an independent thread-manufacturer has succeeded in developing an appreciable business, the agents of the combination revive one or more of those brands whose use has been discontinued. These revived brands are known as "fighting brands." They are said to be sold at prices below the cost of production solely to the customers of the independent organ-

[1] Proceedings of the Committee of Merchant Marine and Fisheries in the Investigation of Shipping Combinations, pp. 265, 1252–1254, 1257. Numerous specific illustrations of this practice will be found scattered through the same report.

[2] Report of Robert P. Skinner, Consul-General at Hamburg, Germany, Special Diplomatic and Consular Reports for the Use of the Committee on Merchant Marine and Fisheries dealing with Methods and Practices of Steamship Lines Engaged in the Foreign Carrying Trades of the United States, pp. 53–54.

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ization or organizations. Regular salesmen seldom handle them. Instead they are marketed by special sales forces known as "flying squadrons" which are sent on the road by the combination. Independent jobbers who refuse to deal with the combination are asserted to have been attacked in a similar fashion.[1]

It is alleged that as early as 1897 the members of the Electric Lamp Combination organized a bogus independent, known as the "Royal Incandescent Lamp Company." This concern was merely a selling agency for the purpose of marketing the lamps of the combination under the brand name "Regal." The lamps were sold at prices intended to deprive independent companies of their customers and trade. Contributions made from time to time by the members of the combination supplied the funds to meet the expenses of the scheme.[2]

The expedient of the "fighting ship" resembles local price-cutting in two respects. First the offer is made to the shippers at a given port, and so the rate-cutting is local in character. Second, the cut-rates offered may be taken advantage of by any local shipper. The unfairness is the same as that which occurs under local price-cutting, and so the use of the fighting ship is open to like condemnation.

Whenever, as in the electric lamp case, a bogus concern markets a particular brand in the course of its operations, that brand becomes a fighting brand. In such cases, therefore, it may be regarded rather as a part of the operation of a bogus concern than as a separate method. Hence it is unfair upon the same grounds as justify the application of such a characterization to the use of bogus concerns.

In cases where the bogus independent plays no part, as in the illustration from the thread combination, "fighting brands" may be contrasted with local price-cutting. In the matter of area, the two methods are the reverse of one another. Local price-cutting is confined to a relatively small area or areas. But there is no limit to the area over which fighting brands may be used. Again, local price-cutting amounts to an offer to sell to

[1] United States of America *v.* American Thread Company *et al.*, Petition in Equity, U. S. D. C. for the District of New Jersey, p. 14.

[2] United States *v.* General Electric Company, Petition, *cit. supra*, p. 34.

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any one, while in the use of "fighting brands" the offer to sell is made to the customers of independent organizations only. This latter fact, for reasons previously indicated in discussing bogus concerns, would tend to make such fighting devices more reprehensible than local price-cutting. Though differing in the respects mentioned, the results of the two methods are identical. Both are efficient agents for the destruction of competition.

IV. *Lease, sale, purchase or use of certain articles as a condition of the lease, sale, purchase or use of other required articles*

Perhaps the most interesting of any of the methods of unfair competition is the requirement that, in order to obtain certain articles, a concern shall lease, sell, purchase or use certain other articles. The successful imposition of such requirements is usually most destructive to competition. Not infrequently competition may be suppressed altogether. Though conditions of this character show considerable variety, they may be discussed under three heads according to the more general points of difference which they present both in operation and effect. An organization may require:

A. The purchase or lease of articles upon which the patents have expired, as a condition of obtaining patented articles.

B. The use of certain patented articles, as a condition of obtaining other patented articles.

C. The purchasing, selling or handling of a certain article or line of articles, as a condition of the purchase or handling of another article or line of articles.

A. At least three organizations have imposed the first of these three classes of conditional requirements. By a series of contracts made in 1906 and 1909 with foreign parties, the Electric Lamp Combination acquired the exclusive right in the United States to the inventions, patents and applications covering tungsten and tantalum filament lamps. The advantages of lamps of these types—economy in the cost of service etc.—are too well known to require enumeration. An extensive demand for them arose in the United States. Jobbers and dealers were practically compelled to stock them. The combination then offered a contract which provided for the sale of tungsten and tantalum

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filament lamps to such dealers and jobbers as would also purchase from it all of the carbon-filament lamps which they required. The patent upon carbon-filament lamps had expired in 1894. The contract therefore was unquestionably an attempt to compel dealers and jobbers to purchase solely from the combination certain articles upon which the patents had expired.[1]

The "tieing" clauses in the leases of the United Shoe Machinery Company furnish a second example of the first class of conditional requirements. A "tieing" clause may be described as a provision requiring that a given machine must be used in conjunction with another or other machines. Sometimes, as will later appear, the Shoe Machinery leases tie together two patented machines. In certain other cases the leases have tied to patented machines, others upon which the patents have expired. The effect of the latter type of clause was described by Mr. Jones:

> At the present time [1912] a very large proportion of the important basic patents have expired, and but for the restrictions imposed upon us by their leasing system we should today be exercising our undoubted right to use, without royalty, a large part of the machinery now employed.[2]

The Crown Cork and Seal Company, of Baltimore, manufactures more tin caps for bottles than does any other concern in the United States; probably more than any other concern in the world.[3] The same company also controls patents upon a certain device known as the Jumbo capping machine. This is used to put caps on bottles. None of the machines is sold. They are leased to brewing and bottling establishments under agreements which provide, among other conditions, that the "said machine shall be used only in connection with crown

[1] United States *v.* The General Electric Co., Petition, *cit. supra*, pp. 10–11, 27–32. It should be noted that the final decree of the court in this case forbade the continuation of this practice.

[2] Testimony of Charles H. Jones, Hearings before the House Committee on the Judiciary, Trust Legislation, Serial No. 2, Patent Legislation, Serial No. 1, 1912, p. 65.

[3] Testimony of Alexander Whiteside, Trust Legislation, Serial No. 2, Patent Legislation, Serial No. 1, *cit. supra*, pp. 163–164.

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corks purchased by the lessee directly from the lessor." [1] The patents upon the caps expired years ago. The lease attempts to compel bottlers to purchase all caps from the Crown Cork and Seal Company.

In the effort to determine the unfairness of this class of conditions, the first case must be distinguished from the last two, so far as legality is concerned. The requirement of the Electric Lamp Combination must be regarded as illegal in view of the perpetual injunction issued by the court against this and other practices. On the other hand, the shoe machinery and crown cork restrictions appear to be legal, under the decision in Henry *v.* Dick.[2] Apparently they are but valid conditions for the use of patented articles. Under legal construction it is doubtful if they can be regarded as unfair competition. But, as elsewhere indicated, the legal and economic views of unfair competition may differ. This seems to be an instance of such divergence. From an economic standpoint the electric lamp, shoe machinery and tin cap conditions are equally to be regarded as unfair. This is true even though we grant the soundness of the monopolistic theory of the patent law.

The theory which underlies the grant of monopoly in a patent is that human progress is promoted by the gift to inventors for a term of years of the exclusive property in their inventions. At the end of this period, however, it is intended that the inventions shall become the property of the public. For this reason, inventors are required to give their specifications to the patent office. When the term of the patent expires, the community thus receives the benefit of the invention through a complete knowledge of all its details. For the term of his patent, the inventor receives the profits or royalties from sales or

[1] Lease and License Agreement, *ibid.* p. 164.

[2] 224 U. S. 1. The use conditions in the Dick case applied to ink, paper and other unpatented and unpatentable articles. In the Shoe Machinery and Crown Cork instances they applied to patentable articles which have been patented and upon which the patents have expired. This distinction is probably of no material importance in determining the legality of the restrictions of the two latter companies. The decision was by a four to three vote of the seven justices who participated; and a different view may be taken where such use of a patent is clearly part of a plan to maintain a monopoly of other than the patented article.

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leases. At its expiration he ceases to be entitled to further emoluments. The community then reaps the benefits of the device free from any further burden arising from the right and property of the inventor in his invention.

Theoretically any concern may begin the production of an article previously patented as soon as the term of the patent expires. Actually it may be unable to do so. Conditional requirements may so destroy the market that even if the goods were produced there would be no customers to purchase. This precise situation seems to have developed through the "tieing" clauses of the Shoe Machinery Company applying to released patents. Upon this point the following bit of testimony is worth quotation:

MR. RUCKER. Was there anything to prevent other manufacturers from manufacturing each of those machines that they designate "essential"?

MR. JONES. Such machines as embody the *expired patents*[1] have not been manufactured, for the reason that in this country no one could be found to purchase them, . . .[2]

A manufacturer who has begun the production of goods upon which the patents have expired, ought, under previous assumptions, to have a free and open market for those goods. If this is denied him, the competition is no less unfair than if the market is entirely closed as in the shoe machinery case. If the market is not a free and open one, his productive efficiency, however great it may be, is of no advantage to him. His sales are and will continue to be restricted even though the same article produced by his competitors is both more costly and of a poorer quality. He may discontinue business because of its lack of profit. It is conceivable even that he may be driven to do so through the prospect of bankruptcy.

The conditional requirements of both the Electric Lamp Combination and the Crown Cork and Seal Company deny an open market to competitors manufacturing goods upon which the

[1] Italics are the writer's.

[2] Hearings, Trust Legislation Serial No. 2, Patent Legislation Serial No. 1, *cit. supra*, p. 71.

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patents have expired. This fact is best shown by the testimony of Mr. Whiteside of the United Cork and Seal Company, an organization which manufactures bottle-caps practically identical with those of the Crown Cork and Seal Company.

MR. WHITESIDE. . . . . it will be decided so that the Crown Cork Seal Co. . . . . can sell their Jumbo capping machine and prevent the use of any caps but theirs on it; and it is perfectly easy to see that the risks which a brewer who has one of those Jumbo capping machines incurs in buying caps from us or anybody else who use them on that machine are so great that, practically speaking, he will not buy, if[1] you can find a brewer who is willing to disregard the obligation of the contract which by force or otherwise he has entered into. Some brewers have sufficiently high moral standards to say: "We have made this contract, and whether we like it or not we will stick to it." But even if they have not as high a moral standard as that practically they won't buy any great quantities from us or anybody else.[2]

If the theory of patents has been correctly stated, a legal decision which upholds restrictions like those of the Crown Cork and Seal and Shoe Machinery Companies, however consistent with judicial precedents it may be, would seem clearly unsound from the viewpoint of economic theory. From the economic standpoint, the unfairness of such conditions is so clear that a judicial decision upholding them can hardly be expected to stand the test of time. If the change does not come through new judicial interpretation, it is certainly to be expected through new legislation.

B. As previously stated, the "tieing" clauses of the Shoe Machinery Company have another aspect than the one just discussed. They may require that a given patented machine must be used in conjunction with another patented machine.

The theory of patents assumes that an inventor deserves a reward for the benefits which he is supposed to have conferred upon society. The reward takes the form of an exclusive right

[1] This is probably either a misprint or careless statement. It should read *unless*. The jumbled wording is as in the original.

[2] Hearings, Trust Legislation Serial No. 2, Patent Legislation Serial No. 1, *cit. supra*, p. 171.

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to the invention for a term of years. It is assumed that in this period the inventor will derive sufficient returns to compensate him for his service. He may secure his remuneration in a variety of ways. He may, for example, manufacture his patented device and lease or sell it. He may dispose of his patent outright for a lump sum or may sell it for a fixed royalty for each unit manufactured. But whatever method he may use, the essential point is that he is entitled to secure whatever profit there may be therefrom.

The inventor's right to derive profit from his invention is, however, in no sense an absolute right. Another individual may invent a patentable device to perform the same work as the device of the first inventor. In this case the only economic right which the prior inventor has to profits is such as is based upon the free competition of the two articles. Society in the granting of the patents has adjudged that each inventor is deserving of reward. The second inventor is entitled to derive profit from his device as well as is the first from his. Is it not clear that if the first inventor uses any method to close or restrict the market of the second that such method must be regarded as unfair?

The application of these generalizations to the case in point is evident. Assume that in place of one of the "tied" machines of the United Shoe Machinery Company, a new piece of mechanism is invented by an individual "A." Assume that the new machine constitutes no infringement of the United's patents, is patentable and is patented. Assume, thirdly, that the efficiency of the new machine is twice that of the United's machine, the work of which it is designed to perform. As patentee, "A" is entitled on the basis of the previous assumptions to such profits as the device might earn in free and open competition with a similar machine of the Shoe Machinery Company. In such a situation, the relative productive efficiency of the two machines would determine to a nicety the reward belonging to each patentee. But in the presence of the shoe machinery "tieing" clause, no such just distribution is possible. From whence then is "A" to derive those rewards of which society has judged him worthy? If he manufactures his device,

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who will buy or lease it? If he desires to sell it, who will purchase it?

In the case under discussion, the patent law and its construction by the courts protects one patentee in the enjoyment of profits, and prevents another patentee from deriving a legitimate reward for his services. That such a situation is unfair to the second inventor is beyond dispute. The market for later inventions is closed by the "tieing" clause. There is no opportunity for competition to develop. At the same time a deadening effect upon inventive capacity results; for few will strive to invent when legitimate reward is denied or when their remuneration rests within the discretion of a single corporation.

The manufacturer's license agreement of the Motion Picture Patents Company contains the following clause:

> The licensor hereby grants to the licensee . . . the right and license . . . to manufacture, print and produce positive motion pictures . . . upon condition that they be used solely in exhibiting or projecting machines containing the inventions, or some of them of said letters patent . . . and licensed by the licensor.[1]

It is probably clear that in this case the Motion Picture Patents Company, by virtue of its film control, has endeavored to compel the use of motion picture machines containing one or more of the patents which it controls. The effect is practically the same as that which results from the shoe machinery clauses

[1] License Agreement under the Camera and Film Patents between Motion Picture Patents Company and Biograph Company, Dec. 18, 1908, Sec. (*f*), Clause 1. United States of America *v.* Motion Picture Patents Company and others, Original Petition, U. S. D. C. for the Eastern District of Pennsylvania, Exhibit 3, p. 55. Agreements with other manufacturers contained the same clause. In the case of the United Shoe Machinery Company just cited, it was pointed out that certain "tieing" clauses are based on two valid patents. From the wording of the license clause of the Motion Picture Patents Company quoted above, the situation here would seem to be the same. This is not actually so however. The basic patent of the Motion Picture Patents Company (Revised Letters Patent, 12192) relates only to the negative film. The positive films which are printed and developed from the negative films and sometimes copyrighted are the films used for exhibition purposes. The government has claimed that the control of the patentee does not extend to the product of the patented article "unless new in a patentable sense." In consequence the use restrictions in this case are not, as in the preceding instances, based upon two valid patents, but upon one valid patent, and the product of a patented article.

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tying one patented machine to another. The inventor of a new motion-picture machine is deprived of his economic right freely to market his invention, through the fact that all exhibitors licensed by the Motion Picture Patents Company must use the machine embodying the patents controlled by that organization. In this case, however, in contrast to the preceding one, the market is not entirely closed. Several manufacturers are independent of the Motion Picture Patents Company. This fact affords the inventor at least a limited market. But the clause is still unfair because that individual is entitled to as wide a market as the efficiency of his machine can secure.

C. The Commissioner of Corporations in his report on the International Harvester Company has used the term "full-line forcing" to describe "the practice of requiring dealers to order new lines[1] . . . , as a condition to retaining the agency for some brand of the company's harvesting machines."[2]

A restriction of similar character is charged by the govern-

[1] By the gradual acquisition of various concerns in the years subsequent to organization, the International secured certain new lines. Among these concerns were plants for the manufacture of farm wagons, manure spreaders, and plows. In addition it began the production of gasoline engines in 1904, cream separators in 1905, and tractors in 1909.

[2] Report of the Commissioner of Corporations on the International Harvester Company, p. 306 *et seq.* The report states that complaint of this practice came to the Bureau from a number of independent dealers and manufacturers. It is supported by the extracts drawn from the record in the case of the United States *v.* The International Harvester Company and cited in the government's brief. For example, Claypool, general agent, wrote Perrot, one of the blockmen, Feb. 3, 1912, regarding the approval of two commission agency contracts sent in by the latter: "How about manure spreaders, wagons, cream harvesters (*sic*), engines, tillage implements etc.? . . . If these two dealers will not take hold of our other lines, it will be necessary for our own protection to make other arrangements." *Cf.* United States *v.* International Harvester Company and others, Brief for the United States, U. S. D. C. for the District of Minnesota, *cit. supra*, p. 124. *Cf.* also *ibid.*, pp. 123 and 125. In justice to the Harvester Company it should be said that it introduced testimony to prove that the charge of full-line forcing was untrue. *Cf.* Appendix to Defendant's Brief, Evidence as to Certain Points Abstracted and Topically Arranged, United States *v.* International Harvester Company, *cit. supra*, pp. 382 *et seq.* But it is also true that the assistant general manager of the International admitted that "full-line forcing" had been used, (Commissioner of Corporations on International Harvester Company, *cit. supra*, p. 309), though claiming that it was not to be regarded as a policy of the company but rather as an unauthorized act, with a view to increasing sales.

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ment in its suit against the American Coal Products and Barrett Manufacturing companies. These concerns are supposed to have a very substantial control of the pitch made from coal tar. Some purchasers and users of roofing materials have been required to buy one ton of felt to every two tons of pitch. Naturally such individuals would not be likely to purchase tarred felt elsewhere for those operations in which such pitch was used.[1]

The tendency of full-line forcing is unquestionably to injure competitors. A dealer who is compelled to take a new line in this fashion may and frequently does give up his agency for an independent line of the same goods which he has been carrying in the past. Moreover it has been claimed that in addition to requiring the handling of other products as a condition of handling those desired by a dealer, salesmen have endeavored to overload the dealer with these other products, thereby rendering it impracticable for him to order similar goods of other makers. The effect of such overloading upon the trade of independents would be similar to that which results when dealers are required to handle one line exclusively.[2]

Economically, fair competition would demand that no dealer should be forced to sell a line of goods if he does not desire to do so. If a dealer cannot be induced to sell or handle a line for economic reasons—by better salesmanship, lower prices, better quality etc.—a method which compels him to do it is unfair to other and competing manufacturers. Consider, for example, the Barrett case. There is theoretically no sound reason why anyone should not undertake the manufacture of tarred felt for roofing purposes. Yet one who does so is not long in discovering that the market is not a free and open one. If, as alleged, the Barrett people, controlling a considerable portion of the output of pitch, require that two tons of felt

[1] *Cf.* United States *v.* American Coal Products Company, Petition, *cit. supra*, p. 30. It should be noted that this practice was enjoined by Judge Holt in a decree entered March 14, 1913, on the consent of the defendants to reform their organization. The answer of defendants denied the violation of the Sherman Act set forth in the complainant's bill. The charge mentioned above therefore is to be regarded simply as an allegation.

[2] *Cf.* next section.

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must be purchased from them for each ton of pitch, the manufacturer of tarred felt will be limited in his sales to such parties as purchase from independent pitch producers. The independent manufacturer may have a better quality of felt and he may sell it at a lower price. Yet in spite of these facts he will be prevented by this conditional requirement from securing business which might become his under other circumstances. Nor should it be forgotten that the tendency of such a restriction is to deter prospective competitors. Only with the greatest difficulty can capital be induced to enter a field when it knows in advance of the existence of such restrictions which either partially or entirely close the market.

V. *Exclusive sales and purchase arrangements*

The requirement that a dealer shall handle only a given article or line of articles is not a restriction of recent invention. Many factors' agreements, possibly the larger proportion of them, contain a clause of this character.[1] For this reason more than for any other, such agreements have been denounced as destroyers of competition, and agents of monopoly.

The factors' agreement of the National Wall Paper Company of 1896 contained the following clause: "3. The purchaser expressly guarantee and agree that between September 1, 1896, and June 30, 1897, will not purchase or acquire any wall paper or hangings the product of any person or corporation other than the company. . . ."[2] Another exclusive clause not of modern origin may be quoted from the factors' agreement of the American Tobacco Company dated October 1, 1895: "Eleventh. Upon your acceptance in writing of the terms and conditions of this agreement, you understand and agree that you will handle our cigarettes exclusively . . ."[3]

[1] The fact should not be lost sight of that such clauses are merely a written manifestation of such arrangements. They are not necessary to exclusive selling or purchasing, for these things can be secured without any written contract.

[2] Report and proceedings of the joint committee of the Senate and Assembly appointed to investigate trusts. State of New York, Senate Document No. 40, 1897, pp. 804–5. The somewhat garbled wording is as it appears in the original.

[3] *Ibid.* p. 881.

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In the past the photographic supplies combination has enforced exclusive sales arrangements. The government claims that even at the present time the Eastman Kodak Company of New York will not sell any of its line of goods, patented or unpatented, to any independent retail dealer who handles a line of goods manufactured and marketed by its competitors.[1] The following quotation indicates the conditions formerly prevailing in this industry.

Q. (By MR. CLARKE) Now, suppose that a dealer handling Mr. Carbutt's paper wanted some other article—say a camera, for example—from the Eastman Kodak Company; could that dealer procure it? A. Why, I doubt whether the Eastman Kodak Company would sell that dealer unless he were handling their whole line exclusively. I do not think they would care to sell him unless he would confine his energies to their line.[2]

Until 1905, the commission agency contracts of the International Harvester Company contained a clause which required a dealer under penalty to handle exclusively the harvesting machinery of that organization.[3] In that year these clauses

[1] United States *v.* Eastman Kodak Company, Petition, *cit. supra*, p. 34. The Eastman Kodak Company of New York conducts the business of manufacturing, selling, and shipping articles used in the photographic supply business. Its capital stock is owned by the Eastman Kodak Company of New Jersey, a stock-holding corporation organized in 1901, and which also holds the stock of Kodak, Ltd., of London, England. and Canadian Kodak Company, Ltd., a corporation of the Dominion of Canada.

[2] Testimony of C. S. Abbott. Report of the United States Industrial Commission on Trusts and Industrial Combinations (second volume on this subject), vol. xiii, p. 198.

[3] The following is a typical clause of this character: "Such agent especially agrees not to accept the agency for or to be interested in the sale of any grain binder, header, corn binder, husker and shredder, reaper, mower, stacker, sweep rake, hay rake or hay tedder, other than those manufactured by the International Harvester Company, either directly or indirectly, nor to permit any one acting for him as employee, agent or partner, so to do while acting as agent for the said company under this contract, and said agent agrees to pay such company on demand as liquidated damages, twenty-five dollars for each grain binder, header, or corn binder; fifty dollars for each husker and shredder; ten dollars for each mower, reaper or stacker; five dollars for each sweep rake, hay rake or hay tedder sold in violation of this paragraph of this contract." Commissioner of Corporations on International Harvester Company, *cit. supra*, p. 304.

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were eliminated. At the time, anti-trust proceedings against the company were pending in several states. In the state of Texas the clauses were dispensed with three years earlier. In no case have they been restored.[1] The Harvester Company has emphatically denied in its brief that it has ever attempted to compel dealers to handle its goods exclusively. To prove this point it has secured the testimony of a large number of witnesses.[2] Against this evidence one must, however, weigh the following extract from a circular letter of instruction written on November 11, 1904, by R. C. Haskins, the then head of its domestic-sales division.

There has been some discussion lately on the subject of the exclusive feature of our commission contract, and we desire at this time to state the principle that will govern in this matter. Where we furnish goods to an agent for sale on a commission or consignment contract, *our interests demand that such articles be handled solely on an exclusive basis.*[3]

Another case of an exclusive arrangement is to be found in the so-called "jobbers' license agreement,"[4] of the recently dissolved Bathtub Trust. This document contained the following clause:

"10. The purchaser[5] also agrees during the life of this contract not to purchase, sell, advertise, solicit orders for, or in any way handle, or deal in sanitary enameled ironware of any

[1] *Ibid.* p. 304.

[2] Statement, Brief and Argument for Defendants, United States *v.* International Harvester Company, *cit. supra*, p. 102 *et seq.*, and also Appendix to Defendants' Brief, *ibid.* pp. 382 *et seq.*

[3] Italics are the writer's. *Cf.* United States *v.* International Harvester Company, Brief for U. S., *cit. supra*. pp. 127-128.

[4] The term "License Agreement" is rather a misnomer as implying the permission to manufacture or sell a patented article. The agreement in question, in addition to the exclusive sales arrangement, provided for the maintenance of prices upon sanitary enameled ironware, which was absolutely unpatentable in itself, although in its manufacture, a patented too was used. The contention of the combination was that this fact constituted sufficient ground for the creation of this and other agreements, but this was denied by the court. Hence the term "License Agreement" is inappropriate in this connection. *Cf.* 226 U. S. 20.

[5] The jobber.

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manufacturer *not licensed*, except with the express written permission of the licensor." [1]

It is claimed that the American Sugar Refining Company has in the past successfully demanded that brokers and other intermediaries shall handle its sugars exclusively. It is also said that various wholesale grocers associations have been induced to do the same thing.[2]

The Cleveland Stone Company is supposed to produce at least seventy-five per cent of the total number of grindstones which are consumed in the United States. These are sold only through jobbers. The company requires that each jobber handling its goods shall enter into an agreement not to handle the goods of any other concern. It refuses to deal with any jobber who handles to any extent the output of its competitors.

The consequences which flow from the enforcement of arrangements of the character described may be best illustrated by the cases of the bathtub and photographic supplies combinations. It was estimated by Mr. Wayman that eighty per cent of the total furnace capacity of the country was controlled by the sanitary enameled ironware manufacturers who joined the former combination.[4] At the same time all the jobbing trade except about twelve per cent [5] signed the "jobbers license agreement" containing the exclusive clause previously quoted.

[1] Italics are the writer's. United States of America *v.* Standard Sanitary Manufacturing Company *et als.*, U. S. C. C. for the District of Maryland, Record, vol. ii, p. 37.

[2] United States *v.* American Sugar Refining Company, Petition, *cit. supra*, p. 91.

[3] United States of America *v.* Cleveland Stone Company *et al.*, Petition in Equity, U. S. D. C. for the Northern District of Ohio, pp. 19–20.

[4] Testimony of Edwin L. Wayman. United States *v.* Standard Sanitary Manufacturing Co., Record, vol. i, *cit. supra*, p. 69.

[5] This is the estimate which the writer made from a study of the testimony. All the principal jobbers of plumbing supplies in the United States are listed in the "Blue Book" of the plumbing trade, known officially as "List of Jobbers of Plumbing Supplies in the United States," and dated July, 1910. Only 49 out of the 387 jobbers on this list, or about 12 per cent, refused to sign the agreement. Forty-eight jobbers not mentioned in the "Blue Book" also signed. Assuming the ratio of signers to non-signers to be the same among jobbers not listed in the "Blue Book" as among those who were, the percentage of the total number of jobbers who failed to sign would be about twelve.

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In consequence, the market of twenty per cent of the production of the country, based on the number of furnaces, was limited to twelve per cent of the jobbers; for jobbers who signed the agreement were obligated to purchase *exclusively* from licensed manufacturers.[1] All of them therefore who kept this condition of the agreement must in consequence cease to purchase of such independents as refused to join the combination and thus become licensed manufacturers.[2]

The operation and effect of the exclusive selling clause contained in the contracts of the Photographic Supplies Combination is indicated in the testimony of W. B. Dailey. Mr. Dailey was a manufacturer of photographic paper in competition with the combination. After relating instances where dealers were cut off by the combination for failure to sell exclusively, he said, referring to one of these dealers:

. . . . He put up about as game a fight as anybody could for nearly a year. But, finally, it was the same thing with him. He said to himself: "I am losing money; there is no use talking; I have fought it hard this year, but I can not get the goods to sell; the paper alone is not enough." So he had to give in, and so it has gone in a number of cases.

Later Mr. Dailey remarked that the only way it was possible for him and other manufacturers to compete was by selling direct to the consumer. [3]

Exclusive selling or handling arrangements appear when a concern sells through jobbers or dealers. Many manufacturing organizations, however, distribute their products directly. In this case exclusive purchasing requirements take the place of the

[1] Licensed manufacturers were those who signed the agreement which was the basis of the combination.

[2] See the testimony of John A. Kelly. United States *v.* Standard Sanitary Manufacturing Co. Record, vol. i, *cit. supra*, p. 231.

"Q. Did some of the jobbers who had bought goods of you prior to June 6, decline to buy thereafter? A. Yes, sir.

. . . . . .

"Q. Did they assign any reason? A. Yes, sir.

"Q. What was the reason? A. Because we did not sign the license agreement."

[3] Report of Industrial Commission, vol. xiii, *cit. supra*, pp. 184–185.

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exclusive selling requirements. The American Can Company, so it is alleged, has compelled its customers to enter into long-term contracts to purchase cans exclusively from it. The object of these contracts has been to prevent customers from dealing with independent establishments.[1] Similarly, the Corn Products Refining Company devised a plan whereby customers were induced to purchase from it exclusively.[2]

So far as selling is concerned, every manufacturer should be able to sell his goods freely upon the basis of their quality and his own productive and selling efficiency. If under such conditions he loses customers, or if his sales fail to expand, something is wrong either with the quality or prices of his goods, or with his sales force. No economic unfairness has been practiced against him by anyone. On the other hand, if exclusive selling is insisted on, many manufacturers may be prevented from expanding their business in the degree to which their economic efficiency entitles them. In fact they may lose customers and business which would remain theirs if the market remained free and open and if goods were sold on the basis of their quality and the efficiency of the organizations offering them.

Aside from the inducement of rebates the ability to secure exclusive selling depends chiefly upon the power to refuse to supply goods upon any other condition. The accepted theory is that a private business has the right to refuse to sell to any individual. It is not necessarily unfair for a concern to have an agent who handles its products exclusively. The vice of these arrangements lies in the fact that where they are enforced either by rebates or by refusal to sell except to those selling exclusively, they hinder and handicap other manufacturers who are seeking to market similar lines. This situation would in large measure be avoided by compelling private businesses to sell on like terms to all who might tender the price,[3] thus applying

[1] United States of America *v.* American Can Company, Original Petition, U. S. D. C. for the District of Maryland, pp. 19–20.

[2] *Infra*, section vi. United States *v.* Corn Products Refining Company and others, Petition, pp. 20–21.

[3] Allowing of course for reasonable differences in prices between different classes of trade.

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to them the theory applied to those businesses which are deemed to be affected with a public interest. By the adoption of such a theory and by the elimination of rebates, it would be impossible to induce or compel dealers to handle goods exclusively except when the quality or prices of such goods make it worth their while to devote their entire attention to that line. Whenever this ceased to be the case, there would be nothing to prevent the introduction of competing articles.[1]

The same considerations apply to exclusive purchasing arrangements. The abolition of rebates and preferences offered as an inducement to such contracts, and the denial of the right to refuse to sell goods to any purchaser tendering the price, would remove the chief incentive to the making of exclusive purchasing arrangements. At the same time, concerns would not be prevented from protecting themselves, by means of long-term contracts, against the fluctuations of the market.[2]

The preceding discussion presents the writer's interpretation of the meaning of unfair competition. Eleven methods of what is deemed unfair competition have been enumerated, and five of these methods have been examined somewhat in detail. In an article to follow, the remaining six methods will be discussed, and an endeavor will be made to show the importance of a careful consideration of unfair competition before any satisfactory solution of the trust problem can be hoped for.

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[1] This is of course of special importance when an entire line of several different articles is handled. There may be certain articles of the line distinctly inferior to competing articles, yet the latter cannot be introduced, where such introduction would cause the loss of the entire line, some articles of which are perhaps absolutely necessary to the dealer.

[2] Exclusive arrangements also exist in the deferred rebate plans of various steamship conferences. These involve, however, certain important considerations which have little or no application to the forms of exclusive arrangements utilized by manufacturing organizations. It is deemed advisable, therefore, to consider the exclusive arrangements adopted by the steamship conferences in connection with the discussion of rebates, which is to follow.

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THE LIFE OF LORD HARDWICKE[1]

THE *Life of Hardwicke* by Mr. Philip Yorke, a descendant of the great chancellor, takes its place as the authoritative source of information for the career of one of England's great jurists and statesmen, who has been much neglected by historians. The only work that can be compared with it is *The Life of Lord Chancellor Hardwicke* by George Harris, an English barrister, which was published in three volumes in 1847. That biography, however, while conveying much information about Hardwicke's activities and presenting important documents and extracts from his opinions and writings, was constructed upon a plan of strict chronological sequence most confusing to the reader, and the original material printed was often unintelligible for want of adequate explanatory notes. Moreover the author did not enjoy facilities for examining the great collection of family papers preserved at Wimpole, the chancellor's country estate; and the bulk of the material upon which the present Life is based was wholly unknown to him. The account of Hardwicke in Lord Campbell's *Lives of the Lord Chancellors* is one of the worst of a series which has been aptly described as magnificent in conception but wretched in execution.

It was not until 1899 that the Hardwicke Manuscripts, filling more than 1000 volumes, were purchased by the British Museum and made generally available for historical investigation. This mass of material is admirably supplemented by another great collection which had already been acquired by the British Museum, the Manuscripts of the Duke of Newcastle, between whom and Hardwicke there was an intimate and continuous correspondence covering a period of more than thirty years. It is principally upon these two great collections that the present work is based. Each chapter is devoted to a broad topic and is divided into *narrative* and *correspondence*. The author's plan has been to curtail the former in order to give more space to the latter. Considerably more than one-half of the work consists of correspondence from, to and about Hardwicke, in which the author has mercifully modernized the spelling, corrected punctuation and completed abbreviations.

In one conspicuous instance it is to be wished that Mr. Yorke had

[1] The Life and Correspondence of Philip Yorke, Earl of Hardwicke, Lord High Chancellor of Great Britain. By Philip C. Yorke. Chicago, University of Chicago Press, 1913.—Three volumes: xv, 685; vii, 598; vii, 653 pp.

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extended his wise self-denying ordinance farther than he has. As an editor he has afforded historical students an opportunity to read documents of the highest importance, revealing the influence and power of a great personality which has been strangely slighted. They are well arranged and accompanied by a helpful explanatory narrative. So far his work merits hearty approval. But most unfortunately for his reputation as an historical author his self-effacing resolution forsook him in the hour of his temptation. He was seduced into writing an introductory chapter, summarizing his interpretation of the eighteenth century, of which an over-sympathetic study of the career of his hero had begotten a grotesquely distorted conception. Through the mirage of ancestor-worship he sees a century of easy morals and irreligion, intemperance and profanity, lawlessness and cruelty and unbridled political corruption transformed and ennobled as "the age of classical ideals and inspirations, with all that that great word signifies, simplicity, proportion, restraint, dignity." Gone are all the old landmarks: the fox-hunting parsons, the drunken squires, the borough-mongers, the gamblers, the smugglers, the highwaymen; gone corruption, obscenity, vice, crime, godlessness. In politics, we are told, there was "order, symmetry and dignity;" in literature, "reserve, dignity and repose." "There are no greater triumphs in letters than Swift's brilliant and virile prose, Addison's polished elegance, Johnson's gravity and dignity, Burke's eloquence, Gibbon's majestic paragraphs or Gray's inspired elegy." In oratory, the speeches of public men "were distinguished by a restrained but impassioned eloquence and by a nobility of style which recalled, and even surpassed, the orations of the Greeks and Romans." The same classical qualities are ascribed to the art and music of the century. Religious life receives this extraordinary indorsement: "It was limited perhaps on its intellectual, and reserved on its emotional side, and devoid of exterior ornament, but faithful in the performance of the simpler religious duties, and genuine, ardent and powerful as a rule of conduct." Mr. Yorke concedes (without a trace of humor) that the piety of the day "may escape the eye of the hasty and superficial observer, absorbed in the statistics of attendances, of confirmations, and of sums subscribed for church purposes." But to his penetrating discernment it is all as clear as day. Eighteenth-century religion "was not a separate profession, but a part of the ordinary existence of the individual, and therefore apt to pass unnoticed by the historian"!

At the conclusion of this startling prelude, which threatens to uproot all one's cherished and traditional conceptions, the reader enters upon

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the body of the work in a mental attitude of amazed expectancy, wondering what hidden springs have been tapped, and bracing himself to receive the evidence upon which the author has based his shattering generalizations. But expectancy will quickly yield to disappointment or amusement. Mr. Yorke's interpretation receives no more support from his material than from the conventional narrative of the eighteenth century. We learn that the period of Hardwicke's tenure of the office of chief justice of the King's Bench was "marked by great popular excesses, by a defiance of authority, and by a general outbreak of crimes of violence and brutality" (I, 131); and that "it was largely with brutes that the law had then to deal" (I, 132). In 1736 the "gin act" was passed, prohibiting the consumption of spirits "largely at that time responsible for the vice and degradation of the lower orders" (I, 133). But we are informed later that it "proved an entire failure" (II, 52). A "smuggling act" served only to "render conviction more difficult" (I, 151). As for the "order, symmetry and dignity" of the constitution it is dispelled in the sinister light shed by such statements as that "George III was living on mutton chops in order that the greater part of his civil list might be spent on buying votes in the Parliament" (I, 289), and that the Duke of Newcastle was deeply humiliated when he was no longer allowed a free hand in "choosing the Parliament" (III, 264). Better evidence of the low state of religion could scarcely be adduced than a letter written by Hardwicke to his friend the Archbishop of York, setting forth cogently the reasons why His Grace should accept appointment to the See of Canterbury. The arguments were apparently convincing, for the primacy was accepted; but the strange thing is that religion did not enter as a factor into the calculations of either chancellor or prelate (II, 80 *et seq.*). As the reader proceeds and the "classical ideals and inspirations" of the age elude his vigilant search, he grows uneasy, perhaps irritated. He has been deprived of his promised thrill. If he is persistent, however, he will find—not what he is looking for, but this: a curious recurrence in overtones of the *motif* of the prelude: "Our perils come from the abuse of party government, from the conduct of those who should be the leaders of the nation but who have preferred to be merely the followers and flatterers of the ignorant and helpless mob" (I, 432). This sheds light upon what had been obscure. The author has already lent color for the inference that the English nation entered upon a rapid decline about the time the Lord Chancellor died. The reader now perceives that this was due to the oncoming of democracy. The "classical age" is explained. It was the good old days

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when the English people knew their place and were treated with proper indifference and contempt by their betters! It is fortunately possible to distinguish between Mr. Yorke the editor and Mr. Yorke the historian. For the former we have much praise; for the latter we can have only charity. Ancestor-worship is not a good basis for historical interpretation.

Of the value and interest of the mass of correspondence contained in these volumes there can be no question. Whoever reads it through shall have his reward. Knowledge not intended for vulgar ears will be imparted to him. He will be initiated into mysteries of state in the days when the Georges were reigning and Walpole and the Pelhams and Hardwicke were ruling in England. He will be vouchsafed many a peep into the royal closet. He will be admitted into the sanctum of the cabinet; he will share the secrets of high diplomacy and will revel in all the illicit joy of reading letters not meant for his eyes.

The career of Hardwicke was so indissolubly bound up with the public life of his country that his biography must necessarily be in large measure the political history of England during the period of his activities. From his entrance into Parliament in 1719 as a representative of one of the "Pelham boroughs" almost to the day of his death, Philip Yorke was continuously in public life. Honors and rewards came to him in quick succession. Solicitor-general, attorney-general, chief-justice of the King's Bench, lord chancellor—the tenures of these offices mark the steps in his rise to power and fame. The reader will carry away from these pages vivid impressions of the extent of Hardwicke's activities. His hand was felt in every branch of the government. No man, by the scope of his own activities, ever more utterly confounded and laid low the doctrine of the separation of powers. Indeed one wonders how his illustrious contemporary Montesquieu (who, by the way, knew and corresponded with Charles Yorke, the chancellor's son) could have evolved a theory of the English government so inconsistent with the facts.

It was as head of the court of chancery, the highest judicial office in Great Britain, which he held continuously for nearly twenty years, that Hardwicke did his greatest work and left his deepest impression. Even those who would withhold from him the character of a great statesman concede his preëminence as a judge. To this phase of his work, however, Mr. Yorke devotes only one chapter. It is lengthy and necessarily somewhat technical, but one of the best in the book. It discloses the learned jurist in decision after decision "perfecting English equity into a systematic science", as one of his successors declared.

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As chancellor it of course fell to him to occupy the woolsack and preside over the House of Lords. This duty, though exacting and time-consuming, has left little impression upon the correspondence here printed.

It is upon Hardwicke as a member of the inner ring of the cabinet—*conciliabulum* some of the wise ones called it—that these pages throw especial light. Such statements as these show how England was actually governed—the "literary theory" to the contrary notwithstanding: "On Monday . . . I was desired to meet Sir Robert Walpole at Hampton Court, with only the Duke of Newcastle and Mr. Pelham" (I, 177). "The principal view of our meeting was explained to be to settle what should be proposed to-morrow night in Cabinet" (I, 223). "Sir Robert Walpole desires you would dine with him in London, on Tuesday next, upon a New Park turkey, and we will have a Cabinet at 7 o'clock in the evening . . . " (I, 228). A minister, himself not of the inner ring, writes in the early days of the famous Pitt-Newcastle Ministry: "The Duke of Newcastle, Lord President [Granville], Lord Hardwicke, Lord Mansfield, the two Secretaries of State [Pitt and Holderness] and Lord Anson form what Lord Granville calls the *conciliabulum*. They meet continually, and their opinion is the advice given to the king." Such was the government of England in the great crisis of the Seven Years War when she was grasping world supremacy. And yet Hardwicke could state the conventional theory as solemnly as anyone:

> 'Tis the great advantage and happiness of us of this Nation to live under a Government the best constituted of any in the world. . . 'Tis the particular excellence of these Laws that they have not been made by the arbitrary will of one man, nor by the humour or ambition or private designs of a few, who have had the fortune to obtain power over their countrymen. But they are Laws established by the tacit concurrence of the whole Nation, who have experienced such usages to be just and good, or else compil'd by the joint deliberation and consent of the representative body of this free people in full and free Parliament. [I, 144,145.]

Of which, as Professor Dicey remarked of Blackstone's description of executive government in England, we may say that it has but one fault: it is the "direct opposite of the truth."

The chancellor was not a mere member of the *conciliabulum*. During the administrations of Henry Pelham and his brother, the Duke of Newcastle, covering the period 1742–1756, it is scarcely an exaggeration to say that he was the hinge on which the government swung.

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The correspondence abounds in proof of the dependence of the Pelhams upon the chancellor. Birth has seldom paid more sincere homage to intellect than when Newcastle wrote, "Dear Hardwicke, without you we are nothing." And of like tenor were the words of the prime minister, Henry Pelham, "There is no doing anything here without you."

In those days a good share of the ministers' business was to persuade the king, and to convince the lady who managed the king. Despite the remark of George II that "ministers are the kings in this country" the royal closet was a real factor in the government. From first to last these volumes reveal a good deal of backstairs and petticoat politics. Every discreet minister paid his respects to Lady Yarmouth. Even the "incorruptible" Pitt did not disdain to have a long interview with her at an important crisis in his career (II, 329, 332). And poor Lady Anson, Hardwicke's daughter, who appears to have had extraordinarily high standards of morality, incurred the displeasure of her relatives because she refused to call on the royal mistress! But Lady Yarmouth was a woman of much common sense and was generally on the right side of public questions. The king, however, was frequently on the wrong side. It was his refusal to follow the advice of his ministers that led to the resignation of the cabinet in 1746 and the formation of that strange "ministry of forty hours" which came to grief before it had begun to govern. In the midst of national disasters in the black year 1756, it was the king who summarily dismissed Pitt, creating temporary chaos in the administration. It required the joint forces of Newcastle, Pitt and Lady Yarmouth to induce him to submit to the appointment of a commander-in-chief of the army in 1757! Democracy has doubtless added its burdens to ministerial office, but at any rate the king's servants are not interminably bothered today by the need of constantly persuading and cajoling the sovereign.

To his other manifold functions the chancellor added that of "cabinet-maker." Upon the death of Henry Pelham he was entrusted by the king with the difficult and delicate task of forming a ministry. His preference was for a union of Newcastle and Pitt as the basis of the new government. After much negotiation he constructed a cabinet with Newcastle as prime minister, though the king's obstinacy excluded Pitt. Consequently the new administration was unmercifully belabored by the "great commoner" and did not last long. Upon the fall of the short-lived Pitt-Devonshire ministry in 1756 Hardwicke again appeared as the man of the hour. In 1757 he brought about the coalition of Pitt and Newcastle by which the war

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with France was waged in all quarters of the globe with such brilliant success. Hardwicke, who had resigned as chancellor when his patron went out of office, reëntered the cabinet without portfolio. Mr. Yorke contends that Pitt's policy which carried the empire to the zenith of its glory was a mere continuation of that which Hardwicke and Newcastle had long been urging.

These pages throw many side-lights upon Hardwicke's contemporaries, especially upon that most interesting man, "Holles Newcastle," as he signed his name throughout this correspondence. The conception of Newcastle as an incompetent ignoramus, for which we are principally indebted to Horace Walpole, a bitter enemy of the Newcastle-Hardwicke "connection," will have to be somewhat revised. It is perfectly true that his "greatness," like that of many another statesman of the old régime, was due chiefly to the fact that he had given himself the trouble to be born in the aristocracy. Still he knew a good deal about international affairs and had a penchant for *haute politique*. He understood quite as clearly as did Pitt that "the" enemy was France, and that the conflict with her was commercial, maritime and colonial. The policy of subsidizing continental allies to create a "diversion" was merely taken over by Pitt from the Newcastle system. And in manipulating the House of Commons, distributing the patronage, and managing elections, the Duke was a consummate artist. He was not, however, a great man. His character, as revealed in the correspondence, displays many of the traits which we call feminine when they happen to be associated with a man. He was intensely vain; his pride was forever being wounded. "I am cruelly hurt," "cruel usage," "I have felt too much for near two years not to be a little sore" are samples of what one meets over and over again. One of Hardwicke's regular duties was to sooth and advise the Duke. His vanity had none of the virile egotism of Pitt—("I know that I can save this nation and that nobody else can." "I will be responsible for nothing that I do not direct.") Newcastle always needed the support and counsel of a stronger character and intellect; his dependence upon Hardwicke is often pathetic. He was constantly threatening to resign; but place and power were the very breath of his nostrils. Immediately upon the accession of George III in 1760 Hardwicke urged him to resign, for the new king had his axe out for his father's ministers. But Newcastle for once rejected Hardwicke's advice with most humiliating consequences to himself. He clung to office only to endure the protracted torment of seeing all power and influence slipping from his hands. When we say that he was a political corruptionist we say only

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that he was a typical eighteenth-century English politician. Did not Pitt sit for Old Sarum, and did he not ask favors for his relatives? And though born with many silver spoons in his mouth, Newcastle was never found with one in his pocket. Nothing in office became him like the leaving it. "The manner of your going out," wrote the Duke of Cumberland, who had witnessed the rise and fall of many ministries, "has more decency and dignity than I have seen in my period." He was a true friend—truer than some persons in whom he trusted. The Bute ministry could probably have been easily overthrown in 1762 by a coalition of Pitt and Hardwicke with Newcastle. But the "great commoner" had been silenced "just for a handful of silver," and the chancellor's sons—now influential in office and in Parliament—were detached from their father's old friend by favors shown them by the new minister. Though the author tries to lend to this episode a coloring favorable to his own family, it appears that the "house of Yorke" ungratefully abandoned its benefactor in the hour of his need. The Duke's only protest was a reproachful and intensely human letter to Hardwicke, in which he wrote "Far am I from imputing any part of my misfortunes to yourself, except a little too much caution in what relates to your family and your friends." The fallen statesman put his finger on the worst blemish in the character of an undeniably great man: avarice and ambition for himself and his family. This was, of course, not a trait to be emphasized by a descendant.

R. L. SCHUYLER.

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DAVENPORT'S ECONOMICS[1]

PROFESSOR DAVENPORT'S latest book marks the culmination of his well-known doctrinal tendencies. One is tempted to say that economic study can go no farther toward complete individualism. Readers of his earlier works will find much that is familiar, combined with much new material, the whole organized into a most valuable body of economic theory. It is inevitable that much space should be devoted to establishing fundamental concepts and definitions and to defending them, but one could wish a more ample opportunity to see these concepts at work and so to judge them by their fruits. From what has been said it may be inferred that the book is more suited to advanced students than to beginners. The author chooses to reiterate difficult bits of analysis, and to rouse and slay repeatedly the demon of circular reasoning. Nevertheless, his trenchant style enlivens the work wherever the nature of the argument affords an opening.

Although Professor Davenport's place as an individualist in economic thought may not be denied, yet one cannot read this latest book without wondering if here is not a miscarriage of justice. For surely he is in some ways the most socially-minded of economists, and his individualism must all be interpreted in the same spirit as his dictum that robbery is productive. He is so socially minded that when he analyzes the effects of one man's profit-making on the rest of mankind, the whole process seems unconscious, a thing taken for granted and not realized as a bit of economic reasoning at all. To him a mere description of our economic system seems enough to guarantee the verdicts of searchers for the common good. His individualistic categories are a means to this end, and the end is social.

> It is, then, for some one to construct an economic science adapted not only to the requirements of the facts, but to the needs of their amelioration. . . . If the program of social progress does not harmonize with the existing social science, something is the matter with one or with both. It is in the conviction that the fault is with the economics that this book has been written. Its aim has been to furnish to progressive social workers that ultimate basis in economic theory which is theirs by right of truth. [page 528]

Professor Davenport is convinced that current economics is guilty of

[1] The Economics of Enterprise. By Herbert J. Davenport. New York, The Macmillan Company, 1914.—xvi, 544 pp.

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jumping to ethical conclusions which the facts do not warrant, and of using the mystic concept of society-as-a-whole to cloak injustice and inequality between different members and classes of members in that organism. In reaction from this error, he holds that the business of economic science, as such, is to describe the facts, not judge them, and that the facts are individualistic, with the self-centered entrepreneur holding the key to the situation. Any introduction of the social point of view seems to lie under suspicion; and we are told to reform our fundamental terms, "production" and "capital" and all that springs from them, so as to include everything that yields any one an income. We must not as scientists assume to make ethical distinctions between different ways of gathering in the proceeds.

But has not Professor Davenport fallen upon the other horn of the dilemma? The reader feels like a physiological chemist who is told to study poisons carefully [page 519], but to make no chemical classification of substances into poisons and foods. If "the zoölogist who could not see a snake would be twin brother to the economist who can find capital only when there is social productivity," [*ibid.*] how much will it improve his zoölogy to see snakes without distinguishing them from rabbits, or rather, to hold that the distinction between snakes and rabbits is purely an ethical distinction, with which he, *qua* zoölogist, must have nothing to do?

In earlier books the author has insisted on the distinction between the social and private conceptions of production, capital etc., and protested against applying the conclusions of the one to the problems of the other. The present book appears to limit the pure science of economics to the private categories alone (pages 29, 30, 126–128). In an earlier book the practical problems of reform were studied as the "art" of economics. The present work gives the impression of blending the "art" of economics with ethical criticism and the social-economic analysis with both, and banishing all three from the strictly bounded realm of pure economic science. "Parasitism is not a competitive category but an ethical appraisal."[1] And yet ten pages farther on is the heading: "Aggregate of incomes equals aggregate of products"—a statement which can be true only if parasitic gains are excluded. And again: (page 528) "The facts which are, and the facts which are to be, are equally in need of economic categories to fit them." The reader may be pardoned for being somewhat in doubt

[1] P. 127. Possibly this is not a fair statement of the author's position. He is far from ignoring the social analysis; but he does not claim to limit himself rigidly to pure science as he has defined it. (p. 30.)

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just how seriously he shall take the sweeping declarations of the second and third chapters, and he may question whether it follows even in the author's mind that, because the directing forces of modern economic life are prevailingly individualistic, therefore economic science must be exclusively so. What would such a science do if the competitive system should gradually—very gradually—give way till it was no longer dominant?

Many economists would agree that "social marginal utility," when used to explain market price, is a ghastly libel on the necessities of the poor,[1] that "productivity" is no synonym for merit or social importance, and that large earnings are regularly gotten from activities that are socially unproductive. But does this lead inevitably to the Davenport terminology?

Science must not merely describe; it must understand and explain. And no individualist study is complete which stops short of all the causes and all the effects, individual and social, of the things individuals do to make a living. Nor, indeed, is any social explanation complete which ignores individual conflicts or individual wrongs. There need be no great conflict between the two methods of approach, for they must meet somewhere if only both are carried far enough. And if Smith, an economist, is robbed by Jones, surely Smith is competent, as a scientist, to report that he lost what Jones gained and that Jones added nothing to the gratifications of humanity at large in the process of "producing" Smith's purse from Smith's pocket. So far, he is merely describing facts. But if he goes farther and makes this principle the basis of a general distinction between two kinds of income, is he not still acting as a scientist? The reviewer is unable to believe that the distinction between "predatory" and "socially productive" which Professor Davenport himself uses, and which underlies his very insistence on the (competitive) productiveness of burglary, is not a scientific distinction.

But a more interesting query is whether the limits which the author proposes for the science of economics may not prevent it from furnishing the best working basis for social progress. In his analysis, with the entrepreneur as the central figure, the weariness of labor is no part of the cost of production save as wages measure it; the blood of injured laborers is no cost if the employer can avoid paying for it; and the risks of the business are the risks of money-loss borne by the entrepreneur

[1] *Cf.* Professor C. E. Persons' article "Marginal Utility and Marginal Disutility, as Ultimate Standards of Value." *Quarterly Journal of Economics*, vol. xxvii; p. 547 *et seq.*

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(pages 67, 79). But the whole trend of reform is based on the realization that the laborers risk as much more than the employer as life is more than property; it strives to seek out and fasten upon the employer the gravest of those human costs of production which he could avoid paying for, if competition between employers were the only safeguard.

Reform has its own humanitarian scheme of values, independent of the measure of the market, and the more definitely this scheme is formulated, the easier it will be to avoid hysteria, and to attack worst evils first. But if the description of fact which the economist furnishes accepts the market measure as the only one it can recognize, treats of prices in terms of other prices and of robbery in terms of other robbery, it would seem to give the reformer no handle to take hold of. In such case, reform must disregard the system and thought of the economist, not build upon it.

For if economics is to explain as well as describe, it cannot explain the market in terms of the market alone. Even Professor Davenport does not so limit himself. For instance, he discusses the question whether the productivity of capital has any effect upon interest, adopting for the moment the conventional use of the term, although by his own previous definition of production, interest *is* the productivity of capital—to the lender (page 368). And productivity to the user is treated at the critical point of the study, in terms which indicate that it involves an increase in the sum-total of human gratifications,[1] not fraud, burglary, nor the sinking of shiploads of spices. And if this be art or ethics, not science, then the most constructive parts of the author's work are thus tainted—and necessarily so.

The reviewer hardly knows whether to hope that he has, or has not, done injustice to Professor Davenport, in the above criticism. The chief excuse for paying so much attention to a matter of terminology is that the author himself insists upon it so strenuously.

Professor Davenport's indictment of the productivity economics contains four main charges. First, it is maintained that there is no "specific product" which an employer or any one else could trace through the technical processes of modern production and assign to particular instruments.[2]

> The productivity is never the separable and specific productivity of each [factor of production] but only the joint and inseparable productivity of all

[1] Pp. 215–216. See also pp 371–377, 436.

[2] Pages 148, 149, 152–153, 156, 214, 452.

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together; . . . with several different factors coöperating together to a common end, it is not true that the maximum payment of any entrepreneur expresses the specific productive power attaching to the factor in question, but only the loss of productivity which would attend the withdrawal of the factor—a loss partly due to the reduced efficiency of the other factors.

But this denies nothing that the productivity theory affirms, and affirms nothing which that theory would deny, with the possible exception of the words "due to." If the efficiency of other factors is lowered by taking one away, surely the loss is "due to" the absence of the absent, not to the continued presence of the present factors. Moreover, Professor Davenport seems at times to be thinking in terms of an equipment disorganized by the loss of one of the complementary running parts and allowed no time for readjustments[1]—hardly an auspicious situation for making the test of marginal productiveness.

Secondly: the author concedes that the entrepreneur can tell if an instrument is worth its hire to him, but claims that he passively accepts the rate of hire which the market makes for him (page 149). That is true—so far as the individual business man can see—but it is also the first case in which the author limits the economist's power of explaining things within the bounds of any one business man's observation. The same method of reasoning would invalidate diminishing utility as a controlling element in price, because an individual consumer accepts the market price as he finds it and merely decides how much, at that price, he is willing to buy.

A third criticism of the productivity theory is that it ignores the earnings of men who prey, and of the tools of predatory trades (page 519). True, the theory disregards the factors of crime, fraud and monopoly, and it may be tacitly assumes an "economic man" so wise that the salesmanship of empty glitter has no power over him. And the theorists may, some of them, have been somewhat careless in applying the results of this highly rarefied hypothesis to the facts of a none too beautiful world. But while we thank Professor Davenport for his reminder, can we not best act on it by building a theory of parasites to supplement the existing theory of producers, rather than by relaying our foundations?

And lastly, the productivity theory is said to teach that income is the measure of social deserving, and so to stand apologist for the wrongs of the present order. Here again, if the doctrine has been so abused, let the offenders do penance. All that the hypothesis will justify is the

[1] See especially page 147. *Cf.* "Value and Distribution," p. 471.

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claim that income would measure deserving under ideal competition ("fair," not wasteful or predatory), granted at all times a perfectly just distribution of property, education and opportunity. That does not tell us much about society as it is, but it does furnish something to build on in planning possible reforms. It is no necessary part of the productivity theory to hold that because the owner of capital tends under certain conditions to get what that capital produces, therefore the heir has an ethical right to his inheritance, and the present distribution of property is just. The questions are entirely separate.

What's in a name? Shall we amend the productivity theory with a statement that unproductive gains play their part in fixing wages and interest, and then offer to annex Professor Davenport? Or shall we call robbery productive, find some substitute term to carry the meaning we now give to "productive", insist on our right as scientists to the distinction, and on that basis invite the productivity economists to let Professor Davenport annex them? There is a waste of good material somewhere.

Another characteristic doctrine of Professor Davenport's is that the cost of what we have is the opportunity we sacrificed to get it. What Brown might make in the shoe business is sacrificed if he makes hats. This idea has been severely criticised, the most fundamental objection being that such considerations may determine the direction of productive effort, but not the amount of it.[1] And if we think only of opportunities for business profit, the statement contained in the objection is a true one, though even so the objection might not prove fatal.[2] But do not the opportunities of leisure limit the amount of work done? If fatigue were the only consideration, higher wages might easily lead to longer hours instead of shorter. High wages raise the opportunity-cost, not the pain-cost, of the last hour's work. And the higher a business man's appreciation of culture, or the opportunities of public service, the earlier is he likely to retire from commercial life. Even the fear of accident is not so much fear of pain as fear of losing one's normal

[1] See L. H. Haney, "Opportunity-cost," *American Economic Review*, vol. ii, pp. 590-600. While much that Professor Haney says is unexceptionable, one point invites disagreement. Is it reasonable to say, as Professor Haney does on page 596, that since opportunities are infinitely varied, therefore "opportunity-cost" ought to be infinite? An hour's work costs me the next best thing I might have done with the hour in question, not an hour's canoeing *plus* an hour's tennis *plus* an hour's light reading etc., etc.

[2] As a form of the "comparative-cost" doctrine, this theory resists translation into dollars and cents, just as the corresponding law of international trade does, with logical pitfalls and barbed-wire entanglements.

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powers to do and to enjoy. This principle seems to square with the general facts of life among energetic races of men, and even among others not so gifted. It is said that the only effect of raising the wages of a Mexican peon is to enable him to stay drunk four days in the week instead of only three. Social economics, as well as individualistic, must take these facts into account.[1] What if such "costs" are outlays only in the same sense that "capital" and "surplus" are liabilities in a business balance-sheet? Can we strike a proper balance without them? Certain philosophers claim there is no absolute evil, only degrees of good—whatever the man with a toothache may imagine to the contrary. If that be true, then "opportunity-cost" is the only kind there is.

But the reviewer must hasten over other matters which invite comment. The process of valuing future goods is suggestively handled, and the theory of credit and crises is treated at greater length than in the author's earlier books. He renews his plea for a restatement of the laws of "diminishing returns" and "increasing returns" in such terms as would serve to clear up ambiguities and rule out misconceptions of these doctrines. The phrase "proportion of factors" is proposed for the former; and the latter is stated in terms of the size of industrial units. Anything that may help clear up the present loose treatment of these principles will be a boon to students and teachers. If one were searching for flaws in the author's very stimulating treatment, one might express a fear lest the reader get the idea at the start that there is, for every enterprise, one "best" combination of productive forces, determined solely by the personal aptitudes of the employer. This might weaken the effect of the later statement that the "best" combination for any one employer varies with the varying supplies and prices of the different productive factors in the general market (pages 423–427).

If the foregoing analysis and comment give no clear picture of a constructive system of economic thought, the fault is the reviewer's, for merely emphasizing what seemed to him most striking. The constructive doctrine appears less heretical than the groundwork might lead one to expect. Perhaps that is because the author ends by including as art or ethics much that he has rejected as science, and by recognizing the practical consequences of distinctions, to which his

[1] "Economics of Enterprise," p. 62. This concept of cost is not fundamentally bound up with the individualist-entrepreneur analysis, as Professor Haney considers. His charge of circular reasoning seems to stand or fall with the other objections considered above.

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definitions deny the seal of official recognition.[1] The closing chapters clearly enter into the field of social appraisal, going so far as to reach the conclusion that two-thirds of the private wealth of the country is unearned. The whole constitutes a most important addition to the valuable work Professor Davenport had already accomplished.

The greatest significance of the author's work lies in his vigorous resistance to the optimistic social conclusions that are often prematurely drawn from the static hypothesis, and in his sturdy insistence on more study of individualistic facts as the necessary basis of thought and action that shall be truly and sanely social. Great strides have been made since the torpor of *laissez faire* was dispelled, but vastly more remains to be done in building the economic theory of the future. "Static" economic theory has intentionally left out of account inconvenient disturbances and most of the forces of evil. The "dynamic" study of life as it is must put them in again.

We are the interpreters of a business world whose official measure of efficiency is the dollar, to a humanitarian age which will never accept that measure—will never believe that the "social marginal disutility" of the infant heir's abstinence is a hundred or a thousand times that of the coal-miner's toil. The typical economist of today is wedded to no panacea of reform, but neither is he a settled apologist of things as they are. And he cannot afford even the appearance of glossing over social deformities with the language of beneficent abstractions.

Without committing himself to any controversial scheme of social or ethical values, the economist can do much to survey the ground the reformer must cultivate. In the following outline the reviewer seeks to indicate, in an incomplete way, the nature of some of these studies without which Professor Davenport's ideal cannot be fully attained, yet which seem to have no clearly recognized place in his system.

To what extent are the following conditions found in business and to what extent are they lacking?

1. Is every cash outlay of an entrepreneur charged to the particular service it goes into, and paid for separately and consciously by the buyer of that service? For example, does every woman who has a spool of thread delivered at her home (a) pay the expense of delivery, and (b) know how much she is paying for delivery and how much for thread? The key to much waste lies here.

2. Is every one who renders services able to charge a price for them?

[1] For example, the distinction between land and capital is insistently denied, but the peculiar position of land-owners is recognized on page 216.

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A competitive price? For example, can tenants get the benefit of improvements they have made, and does all "welfare work" in factories find reflection in the reduced wage-cost of the product?

3. To what extent are relative gains determined by inequality in opportunity for training? Does unequal access to credit or unequal command of collateral security have any effect on the selection of efficiency?

4. Are the sacrifices caused by every gainful process paid for by the one who gets the gain? Or can the tenant save money by wasting the fertility of the landlord's farm, and the man who lets negroes into his tenements be content with his few dollars profit and oblivious to the many dollars loss he has caused the adjoining property owners? Can any part of the factory wages of married women be looked on as compensation for an increased infant death rate?

5. So far as these services and sacrifices are paid for, to what extent are the payments distorted by (a) inequalities of wealth, (b) faulty actuarial estimates of the future (for example, wages in dangerous trades), or by (c) ignorance of the true nature and effects of things (for example, the physiological effects of food preservatives)? We may even ask whether consumers make "choices" representing mere impulse and contrary to their own recognized scale of utilities or value. And if so, do other individuals make money by bringing about such false choices?

6. And finally, drawing on the conclusions of ethics, we may perhaps go so far as to ask what economic difference it makes that men's scales of values are wrong or short-sighted? Or what are the economic results of different ethical standards?

All these things, and more, economics must do, if it would live up to the demand which Professor Davenport makes of it, that it furnish the scientific basis for progressive social reform. These studies of the things single men value as individuals will make possible truer judgments of the things society values as a whole, to wit, the institutions which society chooses to uphold. On a foundation of such thoroughgoing individualistic analysis there may rise a science that will be soundly "social."

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[1] *Cf.* A. C. Pigou's Wealth and Welfare, a most brilliant study in this field.

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REVIEWS.

My Life. By AUGUST BEBEL. Chicago, University of Chicago Press, n. d.—343 pp.

The first vivid impression made by this remarkable book is the relentless discipline to which this Socialist statesman was subjected. It begins with the child. Born in Deutz-Koeln in 1840, his school days and apprenticeship, his life at the lathe in the workmen's shop, and finally in Parliament and in prison present the same picture of a spirit and body never for a moment free from impelling rigors. So continuous had these been from his tenderest years that they are accepted without whimpering or revolt. They never break his spirit or make him long unhappy. It is indeed a rare distinction in his character that out of so much buffeting Bebel should so uniformly speak kindly of those who disciplined him most. This is partly from a certain gentleness in his temperament, but perhaps more from a kind of fatality which enters into his life's philosophy. Free will is mere "moonshine." The most remarkable men he had known appear to him—as he does to himself—rather "driven than the driving power." This reflection occurs again among the last lines he ever wrote. He says flatly: "I do not agree with the proposition that man is master of his own fate."

It is this which helps him to treat those whom he does not like with large tolerance and even with tenderness. Remembering how virulently Herr Most attacked Bebel in *Freiheit*, read, for example, the wholly generous tribute to the anarchist on pages 236–7.

In his long prison experience there is yet scarcely a word of recrimination against his jailers. The reader is made to feel that the victim received a great deal of personal kindness and consideration. It constitutes both the charm and the importance of this story that we are led so impersonally and with such essential modesty to see the natural and almost inevitable growth of the author's character. Nowhere will one better see the slow but stately rise of the Socialist movement in Germany than through the simple and straightforward record here set down: the rise and growth of the Congresses; the inner warfare against the followers of Lassalle; the ticklish relations with "the two old gentlemen in London"; the origin of the trade-union movement, together with admirable glimpses of the struggles inside Parliament.

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In spite of some biting differences, nowhere is a truer portrait of Bebel's heroic yokefellow Liebknecht. It is the very inflexibility of this hardy character which brings out the genius for politics which made Bebel a statesman of the proletariat. In years of incessant committee work he learned the *human* side of his problem—the pliancy and gift for compromise which make political mastery possible. There is genuine documentary value in passages, for example, like those which close the chapter on "My Life in Parliament" or again (page 267) on Bebel's opinion as to the origin of Schaeffle's second and rather surprising study on "The Impracticability of Social Democracy."

This installment of nineteen chapters brings us only to the elections of 1878, after the second attempt by Nöbling on the life of the Emperor. The wide reading it has secured among classes wholly outside Socialism is not only a tribute to the man who held his party to the end; it is also a cheering sign that the issues raised by Socialism may be met in future on a higher level as to fighting methods. This book is but one of many to tell us what the prison has done for the cause, first by creating an invincible sympathy and second by offering the one chance for that reflective leisure to perfect plans, send out appeals of ten-fold greater influence, to write songs, leaflets and books with "the aching passion of the prison" in them.

JOHN GRAHAM BROOKS.

CAMBRIDGE, MASSACHUSETTS.

Further Reminiscences. By H. M. HYNDMAN. London, Macmillan and Company, 1912.—ix, 545 pp.

In the *Record of An Adventurous Life* Mr. Hyndman had already told his life-story in a fifteen-shilling volume. Its success prompted him to this added venture of nearly 550 pages, in which there is much less sobriety than in the first. It is more "genially imprudent," to use one of his own terms applied to another person. Many names of note whom the author counts among his friends are not spared, though few fare so ill as John Burns. Bernard Shaw, Keir Hardie, Ramsey Macdonald and Sidney Webb do not escape unscathed. A certain invincible benevolence takes the sting out of most of these strictures, though if John Burns (as he threatens) writes his own personal document, Mr. Hyndman will find much racy reference to himself.

The twenty-three chapters of the present volume carry us from 1889 to the festivity in honor of this veteran's seventieth birthday on the 7th of March, 1912. Walter Crane was in the chair, with Shaw, Wells, Hunter Watts, Tom Mann and many others gathered at the board.

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Letters and telegrams from distinguished and rebellious folk from all over the world poured in upon the hero of the hour—Bebel, Guesde, Zangwill, Frederic Harrison, Maurice Hewlett, Galsworthy and others. From Alfred Russell Wallace came a letter worth reproducing.

> I have long been an admirer of Mr. Hyndman's long and continuous work for Socialism. When I was in the outer darkness of individualism with Mill and Spencer, he tried to convert me by letter. I wish I could dine with him, but I have not dined (in the gastronomic sense) for twenty years or more. I was first and once for all converted to Socialism by Bellamy's convincing work.

Perhaps the fittest phrase spoken at the gathering was by H. G. Wells who insisted that he was "an outsider." It was Hyndman's "magnificent obstinacy" to which he paid tribute. Though Wells differed from all Marxist orthodoxy, the laugh he thought was just now with the orthodox, and "Hyndman was more right than ever."

"Magnificent obstinacy" characterizes the strength and the weakness which this long record reveals. Confident in the necessity of political action and contemptuous of Syndicalism, Hyndman never yielded to Fabian policies or to those compromised with liberalism which have left the Independent Labor Party with so colorless a record. Fabians have only "carefully perverted a number of promising young university men from the paths of scientific Socialism and real coöperation with the mass of the workers to a permanent occupation of an upper chamber furnished, where superior persons discuss social problems and propound doctrinaire solutions with little or no direct reference to the actual facts of life." Bernard Shaw is "a self-deceived reactionary" in practical life and a "well-meaning farceur on the platform, in the library and on the stage." Sidney Webb with all his industry is only maintaining "a half-way house with very poor liquor." Of Lloyd George and his budget no enraged land-owning duke could speak with more contempt than does Mr. Hyndman. To no volume could one turn for a more consistent account of the original temperamental differences between the Marx orthodoxies and all that revisionist and reform methods in Socialism represent. This is the main value of the volume. The author's record shows us why he should come "so near" and yet never get into Parliament.

What has long been known on the inside but never so frankly published, is his plain telling of the suicide of Marx's daughter Eleanor. Even this he does not tell at its worst. No more sinister figure has ever cast its shadow on the movement than that of Dr. Aveling.

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The final chapter rings with the defiant note of one who is proud of his own chronicle. He goes to the Trades Union Congress of 1912 only to find it perplexed and inefficient. "What feeling can any man of sense have for such imbecile floundering but contempt?" Even the new Labor Exchanges and the Insurance Act are only cowardly devices to hide the real facts. Better far is the general strike carefully prepared, with adequate storage of food beforehand, which should be so thoroughly carried out as to compel the surrender of the classes in possession to the overwhelming majority of the nation.

Two signs seem to him most unhappy—the tributes paid to General Booth at his funeral, to one who was "no more than a dexterous old charlatan," and the disinterment of the single-tax nostrum by "a crew of wealthy Radicals" like Joseph Fels and company. All these futilities serve only to divert the attention from Mr. Hyndman's real cure, which lies in an uncompromising acceptance of the Socialist principle in the sense that private profit in all wealth creation is to be once for all eliminated. Only then can we even "understand what the next steps in the progress of humanity must be." With this "magnificent obstinacy" the book ends.

JOHN GRAHAM BROOKS.

CAMBRIDGE, MASS.

Panama, the Creation, Destruction, and Resurrection. By PHILIPPE BUNAU-VARILLA. New York, McBride, Nast and Company, 1914.—xx, 588 pp.

The Panama Gateway. By JOSEPH BACKLIN BISHOP. New York, Charles Scribner's Sons, 1913.—xvi, 459 pp.

Panama, the Creation, Destruction, and Resurrection is a remarkably interesting and timely volume, dealing with an important and disputed phase of recent history. The work is at once the history of the Panama canal project, from its inception up to the time of the completion of the transfer of the French interests to the United States, and an autobiography of the author in his relation to this project.

M. Philippe Bunau-Varilla is a French engineer of ability and reputation, who at different times has had charge of important engineering tasks. As a student in the *Ecole de Polytechnique* he became imbued with the idea of becoming actively associated in the work of the Panama canal. For some time he was chief engineer of the project. His honor and pride were deeply wounded and involved in the disgrace following the failure of the Panama Canal Company and its at-

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tendant scandals. It then became his self-appointed task to endeavor to secure a rehabilitation of this great French project. The achievement of the inter-oceanic canal by the Panama route became his "religion."

The purpose of the book is to present the facts relating to the history of the canal project under the French régime and to tell the story of the "vindication of the French genius" for the adoption of the Panama route. It is a defence of the accomplishments of the French and a refutation of the charges and calumnies which have been heaped upon the French Panama project. The chief value of the work lies in the fact that it is written by a man who has for so long been active in the interest of the Panama idea. It is valuable also for its liberal quotations of documents. The "ego" is prominent throughout. But as the volume is a memoir as much as anything else, this is not a severe criticism.

The story of the "Creation" is an account of the adoption of the Panama idea by the French and of what was accomplished toward its achievement. It tells the history of the Wise concession, and describes the surveys and plans of the De Lesseps project, the errors in estimates, the difficulties encountered in the work of excavation, and the labors of the author upon the canal. The "Destruction" presents a sympathetic picture of the downfall of the De Lesseps Company. In a most convincing manner the author points out the injustice and misrepresentation connected with the ruin brought upon the thousands of stockholders in the ill-fated undertaking. After an error in financial policy, which embarrassed the company, the destruction of the project, so far as France was concerned, was accomplished by the attitude and actions of the judicial, legislative and executive departments of the French government. The author's criticisms upon the government are extremely severe. His efforts in behalf of the rehabilitation of the Panama idea among the French all came to naught, because of the stain of scandal hanging over everything relating to Panama.

The "Resurrection" begins with the revival of the interest of the United States in a plan for an inter-oceanic canal and the decision of the New Panama Canal Company to endeavor to dispose of its interests to the United States. It ends with the ratification of the Hay-Bunau-Varilla treaty. Its first phase was the struggle between the Panama idea and the Nicaragua idea, which had been approved by the United States. At this juncture the author transferred his efforts to the United States. By lectures, conferences, pamphlets and articles he exerted not a little influence toward securing the adoption of the Panama route.

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The excessive demands of the New Panama Canal Company nearly wrecked these efforts; but on account of an opportune reduction of their price, the American Canal Commission made Panama its final choice. The struggle was now transferred to Bogota, where the ratification of the Hay-Herran treaty was being considered. The Colombian desire to secure everything possible from both the United States and the New Panama Canal Company shattered for a moment the hopes of the author, despite his endeavors and repeated warnings to the Colombians.

By far the most dramatic part of the book is the story of the revolution in Panama and the events which followed. There is a current theory that the executive department of the United States was instrumental in fomenting and staging this revolt. This is the interpretation placed on ex-President Roosevelt's now famous "I took the canal zone" speech, despite his disavowal of any knowledge of what was being planned in Panama, other than what any intelligent reader of the newspapers might have had. The explanation of the revolution given by the author explodes this theory. M. Bunau-Varilla played an important rôle in this movement. He claims the responsibility for the revolution, having given aid and comfort to the Panamanians—and that, after Mr. William Nelson Cromwell had failed to secure the backing of the United States government for the movement. M. Bunau-Varilla drew up a declaration of independence, a plan for military action and a constitution; and his wife made the first flag. These were given to the agent of the revolutionists of Panama, Sr. Amador, who was sent with orders to carry out the revolution in seven days and to confine it to the railway zone. By information which he gained respecting opinions held by the president and secretary of state, the author was able to gamble somewhat on the movements of the United States war vessels, which he felt sure would give the needed protection to the successful revolutionists. All resulted as he had calculated, even to the intrigues among the Panamanians who did not desire that he should have the honor of signing the treaty with the United States. He held to his terms and, by a liberal use of cablegrams, was empowered to negotiate the treaty. He hastened to do this in order to avoid impending intrigues which might endanger the success of the plans. In two weeks from the declaration of the independence of Panama and five days after its recognition by the United States, the Hay-Bunau-Varilla treaty was signed between the United States and the new republic of Panama, giving the former full powers to carry out the colossal project originally formulated by the French genius and ardently defended for more than twenty years by one of her sons.

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Some supplemental chapters deal with the author's ideas as to the merits of a sea-level over a lock canal, Panama tolls, and the fortification of the Canal Zone. The most interesting of these chapters give a defence of the idea of the conversion of a lock canal to the sea-level type, which is considered ideal. While the discussion is technical in its nature, it is presented in such a manner that even a layman may understand it.

From cover to cover the volume is intensely interesting and dramatic. It cannot fail to convince one of the author's devotion of life and means and of his efficient efforts on behalf of the cause of the Panama idea. The story of the revolution is the most plausible ever presented. What Mr. Roosevelt really "took," was advantage of the situation created by a revolt in Panama, materially aided and abetted by the author, and carried out with absolutely no connivance on the part of the United States officials. M. Bunau-Varilla's immediate reward was the honor of having negotiated the treaty which made possible the canal, and the recognition of his services by the United States, France and Panama. But far beyond these was his feeling of satisfaction that by his consecration he has redeemed his honor and that of the French genius, which had fallen besmirched by the catastrophe caused by the financial failure of the French project.

The Panama Gateway is to a large extent a continuation of the preceding work. The author, Mr. Bishop, was secretary of the Isthmian Canal Commission and resided some six years in the Canal Zone, thus having ample opportunity for collecting the materials for this book. The first third of the volume deals with the history of Panama, of the first projects relative to a canal and of the French effort and its failure. In treating of the French company, the author accepts the current ideas as to the scandals which caused the failure, thus differing materially from the story given in the work of M. Bunau-Varilla. Much praise, however, is accorded to the French for what was accomplished under such adverse circumstances. It is pointed out that the five-fold increase of efficiency of the Americans over the French simply marks the advance in mechanical invention of a quarter of a century.

The most valuable part of the book treats of the work of the United States in the Canal Zone and gives a description of the completed canal. Here is a plain narration of facts, given in a terse style. The chapters are brief, each dealing with one of the many phases of the canal work. Among the subjects treated are the beginnings of the American effort, changes in administration and plans, problems of the work, development of a benevolent despotism under Col. Goethals,

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sanitation, food supply, solution of the labor problem and its efficiency, treatment of the laborers, and life in the Canal Zone. Praise is given to the promptness, efficiency and cheapness of the system used in the construction. Everything is found to be quite perfect. The author includes an honor roll of the veteran leaders in the canal work, but too modestly refrains from giving an intimate sketch of Col. Goethals, the man who has done so much to bring the task to a successful conclusion.

The last part of the book describes the completed canal, or rather "the bridge of water" across the isthmus, which is now being opened to the world. Here is given a description of the great Gatun Dam, the locks and gates, how a passage is made, the controlling machinery, the permanent buildings, the supply stations and the fortifications. The volume presents a vivid picture of the latest and greatest acquisition of the American people and makes possible an adequate realization of the magnitude of the task which has been accomplished.

ROSCOE R. HILL.

COLUMBIA UNIVERSITY.

The Almshouse. By ALEXANDER JOHNSON. New York, The Charities Publication Committee, 1911.—x, 263 pp.

In his study of the almshouse Alexander Johnson has produced a readable, illuminating and practical book on one of the oldest and most neglected of our institutions. The almshouse has been the last stop on the road to total dissolution, harboring those whom no power of self or organized benevolence can restore to normal living. The almshouse has usually been a dreary affair—a makeshift or ill-adapted plant, an inefficient organization, an unsifted assortment of human misery in many forms.

In a direct style of writing, out of a long experience with institutions, and with an optimistic point of view, Mr. Johnson has demonstrated that dreariness, if not unnecessary, is decreasing as the almshouse's chief characteristic. He has given definite suggestions regarding the location, construction and administration of an almshouse and of the management and care of its inmates. His suggestions are reinforced with floor plans and illustrations of buildings and abundant examples in each instance of methods which have proved successful in actual experience. These data are drawn from communities which represent varied interests. They thus provide helpful suggestions for any almshouse situation.

The book demonstrates that the almshouse is more than a dumping

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ground. As important as efficient management inside the institution is a sifting process which prevents the admission of those who do not belong there.

> A few years ago, almost everywhere, inmates of almhouses were, and in too many places they still are, a very heterogeneous mass, representing almost every kind of human distress. Old veterans of labor, worn out by many years of ill-requited toil, alongside of worn-out veterans of dissipation, the victims of their own vices; the crippled and the sick; the insane; the blind; deaf mutes; feeble-minded and epileptic; people with all kinds of chronic diseases; unmarried mothers with their babies; short-term prisoners; thieves no longer physically capable of crime; worn-out prostitutes etc.; and along with all these, little orphaned or deserted children, and a few people of better birth and breeding reduced to poverty in old age by some financial disaster, often through no fault of their own.

One by one many of these classes of persons have been taken from the almshouse in many states and provided for elsewhere. This process is still going on. In many almshouses, however, some of them still remain. Recognizing this, Mr. Johnson devotes an important part of his book to the classification of inmates which will make possible greater comfort and safety for some, like old couples, and more effective treatment for others, like the sick, for whom special treatment is necessary.

The appendices give us something of the history of almshouses in this country and abroad and some impressive sketches of various possibilities in improved administration. These sketches are a challenge to every official board having responsibility for such an institution. The book is not technical. If it could be read by every citizen, the result would be an understanding of a little known institution and a wholesome interest in a group of public dependents for whom we have commonly provided the least human and least adequate care.

PORTER R. LEE.

THE NEW YORK SCHOOL OF PHILANTHROPY.

The Cutlery Trades. An Historical Essay in the Economics of Small Scale Production. By G. I. H. LLOYD. New York, Longmans Green and Company, 1913.—xvi, 493 pp.

Mr. Lloyd's volume on the cutlery trades is a valuable addition to the growing mass of material now awaiting the man who will undertake to write the history of the development of the English people. The rural laborer and the land system, the old English manor and the trade

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guilds, the parish and local government, town life in mediæval England and the coming of the factory system have all been made the subjects of careful investigation. The present monograph on the cutlery trades is well worth a place beside the best of these studies. From the nature of the trades which Mr. Lloyd has studied, this volume forms a valuable and necessary check upon generalizations concerning the factory system which have been made from data drawn only from the textile industries and the primary iron trade.

It is a curious fact that the metal trades, with the exception of the primary processes, have, in many of their branches as carried on in England, resisted the inroads of the factory system to a far greater degree than have the textile trades. Hand spinning and weaving practically disappeared a generation ago, but the individual and domestic system has persisted to the present day in the making of knives and files and in such other branches of the metal trades as chain-making. Even yet there are hundreds of men and women—craftsmen of the old-fashioned style—making nails and chains at their own hearths. Nowadays, however, these are merely the stragglers of the great industrial army. Even in the metal trades in England, in 1904, out of 1,475,000 men and women enumerated as engaged in the industry, 1,238,000 were employed in the factories. In the list of the principal industries of Great Britain, only the precious metals showed a larger proportion out of the factory to those within—101,000 workers outside, to 67,000 in the factories. Mr. Lloyd quotes tables for comparison of all the principal trades both in England and abroad, and with these tables gives an emphatic warning against some of the sweeping generalizations concerning the factory system which have been popularly current.

The first part of the volume is occupied with a sketch of the gradual development of the art of forging blades and making cutlery. The author describes the primitive processes of steel-making, and the localization of the cutlery industry in the early days—a localization which slowly and gradually centered in London, and in Hallamshire, of which Sheffield is the principal town. Mr. Lloyd goes carefully into the organization of the industry, the control exercised by the cutlers' companies, the terms of apprenticeship, the rewards of the master cutlers, and the wages and economic condition of the workers. Following this earlier organization of the trade come the rise of trade unions and the struggle for freedom to combine and for higher wages, which developed its greatest bitterness at Sheffield. The whole of this section forms a most valuable addition to the history of the English workingmen.

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Mr. Lloyd does not, however, confine himself to the industrial side of the question. He devotes two chapters to its commercial aspects. The check on false wares, and the protection of trade-marks, the export and import trade in cutlery, and the extent of foreign competition form the principal divisions of these chapters. The final chapter gives brief surveys of six of the principal English industries for the purpose of showing the gradual development of the factory system in each in comparison with its development in the cutlery trades. There is also a short résumé of the advance of the factory system in France, Germany and America—again with the object of showing the level reached at different epochs in the organization of industry. Sixteen appendices contain many valuable statistical tables, transcripts of rules and orders of the Cutlery Companies, and other documents bearing upon the development of the cutlery industry.

ANNIE G. PORRITT.

HARTFORD, CONNECTICUT.

Wealth. By EDWIN CANNAN. London, P. S. King and Son, 1914.—xxiii, 274 pp.

Having a prejudice against large books (page viii), Professor Cannan began his career with a small one, the *Elementary Political Economy* of 1888, soon followed up with a not very small (he must admit) *History of the Theories of Production and Distribution* (1893). The present, which is midway in size, is not a development of the other two. Readers of those and his other works will recognize in this book a stamp of its own, given to it exactly as the author says, by his years of experience in teaching. Its features are not those of the academic textbook, for the audience at the London School of Economics is for the most part quite unacademic. But the general positions of this book with a few reservations are those of general acceptance in university lecture rooms, on both sides of the Atlantic. In reading we realize how considerable is the agreement among economic writers in the twentieth century, greater perhaps than ever before in proportion to the numbers engaged in economic study. Professor Cannan sees no chaos in doctrine any more than in society itself (page 75). A subdued well-tempered optimism is, we gather, justified both in regard to theory (e. g. pages 18, 228) and in regard to practice (e. g. page 84 *et seq.*).

The subject of the book is economics; the subject of economics is economic welfare, and this means material welfare, which means on the whole possession of means of welfare. In less advanced countries

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this possession is something held at a given time; in those more advanced, it is thought of as income over a length of time. There was a significant change, Professor Cannan points out, in the attitude of economists in the earlier and later periods corresponding to this change from less to greater advancement in the condition of the peoples studied (page 4 *et seq.*).

The common and familiar ground is traversed. Perhaps the chief usefulness of the book is its emphasis on positions not so much disputed as neglected: that the wealth of a society is affected by the age-distribution of its members (pages 38, 39); that there is a desirable adjustment of its numbers to this end, a fittest size of population (page 274); that division of labor over a society will often quite rightly prevent an individual man being set to do the work for which he is best fitted (page 48); that in manufacture as in agriculture there is a tendency to "non-proportional" returns beyond a certain limit (pages 69, 71).

It is Professor Cannan's principle (page vi) that the best way to defeat economic heresy is to teach economic truth; and over the ground of his choice he has carried out his principle exceedingly well. He professes to relegate the subjects of currency and of taxation to separate treatises, but incidentally he gives us the basis for both (currency, page 97; taxes, page 156), and much more than the basis in regard to protective duties (page 237 *et seq.*) and taxes on income (page 144 *et seq.*). We have from him a consideration of modern theories of value (page 106 *et seq.*) and of the relation of the state to those who own property and those who live by hired labor (page 173 *et seq.*). Though the whole is stimulating, perhaps the second half of it, dealing with income in nearly every modern shape and form, is the more original. The side of the poor man is presented sympathetically; and the economic position of women has seldom been better discussed in such short compass (page 202 *et seq.*). In both cases there is candor, with a refreshing absence of rhetoric.

The general conclusion is that the present unequal distribution of income, perhaps more unequal than that of wealth (page 220), is due largely to two causes, inheritance and sex (pages 207–208).

Professor Cannan writes, as of old, with strong common sense and in straightforward English, unmistakable in meaning. His criticism is acute and never merely destructive. He writes from a vantage ground of ample learning. It is not possible to forget that he is the editor of Adam Smith when we read such a sentence as this:

> A certain considerable amount of the effort devoted to the increase of

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knowledge is due to a desire for the credit and renown gained by remarkable discovery, to the wish to benefit mankind or that part of it which belongs to a particular race or country, and to the natural itch to discover things which affects every healthy-minded person from his earliest childhood [page 121].

This is a pleasing relapse into the style of the eighteenth century. Our author's ordinary style, as befits his purpose, is of our own times.

J. BONAR.

OTTAWA, ONTARIO.

Esquisse d'une théorie général de la rente. By B. SAMSONOFF. Lausanne, F. Rouge, 1912.—245 pp.

This book is of interest to every student of economic theory, but it deserves the especial consideration of the more conservative theorists who still cling to their faith in the Ricardian rent concept. These cannot fail to be impressed with the author's complete emancipation from the older rent concept found in English economics, and cannot fail to recognize, in the views of Austrian, Italian, German and Swiss economics here cited, the present isolation and growing abandonment of the Ricardian rent doctrine. Viewing the subject broadly, one sees that it is only by a small group of English, American and French economists that rent is now understood as an income peculiarly related to the land factor; everywhere economists have of late been found striving to work out some more general and more consistent conception. Further, the author gives evidence both in his own expressions and in his quotations from others that economists are increasingly taking a broader view of the capital concept, making it include land as well as artificial agents.

The author is an adherent of the "Lausanne School," as he calls the group of thinkers which dates from the elder Walras. He thinks, therefore, not in terms of the old vicious circle of residual concepts, but in more modern terms of equilibriums. He seems, however, hardly to attain to the level of a complete psychological treatment of value. He is a pupil and admirer of Pareto, whose views on rent he seeks only to develop, and in minor points to rectify. He starts at once with a more general concept of rent and does not even deem it necessary to explain or justify his rejection of rent in a sense connected with the land factor. He sees that in the Ricardian treatment there were two concepts intermingled, one static and the other dynamic. As a static concept, rent is "a revenue, a price;" as a dynamic concept, the author thinks it

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"a difference between two prices of the same good" at different times. The static concept of rent in Ricardo is the residual, or differential, income of land uses when other items of outlay are counted as costs. Dr. Samsonoff sees that this is a partial view which may be taken in turn in reference to every other income estimated as a residual. He accepts the conclusions of J. B. Clark, but believes that this reduces the old rent doctrine to "a didactic expedient deprived of all explicative value."

At this point the author sees no other possibility open but "the dynamic concept." It does not occur to him to find the solution in generalizing the static concept of the net uses of the material agent as has been done by the American psychological theorists, most recently by Davenport in his *Economics of Enterprise*. Indeed it would appear that Dr. Samsonoff does not read English, and that he knows Jevons, Marshall and J. B. Clark only through translations. He evidently is quite unacquainted with any of the developments of rent theory that have appeared in English within the past twenty-five years, unacquainted even through Schumpeter's brilliant review in Schmoller's *Jahrbuch*.

The author believes the dynamic concept to be the only fruitful concept for a rent theory, and in various turns of phrase he defines rent as "the difference between prices in successive states of economic equilibrium" (page 20), as "the increase, positive or negative, of the value (price) of a good produced or existent in one economic state and consumed or sold in another" (page 37), as "the risk, favorable or unfavorable, according to circumstances, which attaches to property" (page 43), and as "not itself a particular revenue, but simply a modality which may affect any one of the revenues which are secured from property."

What the author thus is striving to develop is a generalized doctrine of the unearned increment (and undeserved decrement). A passage in the introduction suggests that the unearned increment of land first aroused his interest in the subject. Rent then is here conceived of solely as investors' profit, thus duplicating terminology at one point while leaving a gap in terminology at another (rent as the payment for the use of durable agents). Neither theoretical nor practical needs will be served in this way. The reviewer cannot believe that either in its point of departure or in its conclusions, this monograph is satisfactory. Its chief significance is in the new evidence it gives of the ferment of opinion on this subject.

FRANK A. FETTER.

PRINCETON UNIVERSITY.

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Justice and the Modern Law. By EVERETT V. ABBOT. Boston, Houghton Mifflin Company, 1913.—xiv, 299 pp.

Although the author of this work insists that it is no part of his task to discuss philosophy (page 20), he seems sometimes to stray into that alluring field. His professed aim in writing is "to help in the eternal conflict between established custom and justice" (page xiii). Justice he defines to be "only the application of ethics to human affairs." He rejects that theory of jurisprudence which finds the origin of legal principles in human experience, because "juridical reasoning which has ended in judgments . . . . discloses no study of the experience of the community, no investigation into its customs" (page 10). The law is "based upon that ineradicable and invincible instinct of the race which leads it to believe in a law which is not man-made, is not dependent upon human sanctions, and is, in fact, a moral law" (pages 16, 17). For this important conclusion, the reader must rely mainly on mere assertion. No mention is made of those judicial opinions which consider how the rule therein formulated would work out in practice. No consideration is given to the possibility that the experience of the community might be reflected in judicial decrees, although no appeal to experience appeared in the language of the opinions.

This moral basis is found not only in the common law but in constitutional enactment. The due-process and equal-protection clauses of the Fourteenth Amendment are "grounded in moral, and not merely legal principles. They are not determined by law; but they themselves determine the law; they command it to follow the dictates of morality" (page 69). They are said to be "nothing but the formulation in legal phraseology of that thing which every American so ardently desires, a 'square deal'." The basis of the author's distinction between legal and moral is not clearly disclosed. His attitude towards these constitutional provisions may possibly be influenced by the fact that they lack definiteness of content. They express somewhat amorphous aspirations, rather than specific canons of conduct. By reason of their vagueness, their interpretation may be influenced by preferences of the interpreters, by them identified with the dictates of morality. Due process has been judicially characterized as a mixture of abstract justice and established usage.

To find the principles of the law, then, we must look to the principles of ethics. "We can," says the author, "readily segregate and define three great ethical principles, . . . the egoistic right of freedom, the altruistic duty to help, and the voluntary reciprocating rights and duties of contract" (pages 21, 23). The right to freedom includes,

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among other things, the protection of the right of private property in land from "the principles of men like Henry George and the Socialists," and the absence of all inheritance taxes, where property is "seized upon the flimsy pretext that a man has no right to execute a transfer of his property to take effect at his death without the consent of the state" (page 29). It is questioned whether the Beef Trust is under an altruistic obligation to sell for less than people are willing to pay, or to pay higher wages than workmen are willing to accept. The courts have often overworked the duty of altruism and have accomplished grave injustice by confusing it with the consensual obligation. This confusion has been introduced through the use of such "catchwords" as "equity and good conscience," "public policy," "unjust enrichment" and the like (page 66). No complaint seems to be made of confusion wrought in the name of "ethics" or "justice" or "the dictates of morality."

In spite of these moral principles which determine the law, we are found to be in a parlous state. The reason is that lawyers and judges, in spite of their training in legal analysis, are "quite untaught in the technique of the reasoning process" (page 163). The incapacity of the corporation lawyer to think correctly is illustrated by his failure to convince the courts that the right to sue in the corporate name and the stock-holder's limitation of liability are not privileges granted by the law, but inherent rights which cannot justly be denied. But for the "strange and unaccountable acquiescence" in the contrary assumption, a corporation would be recognized as "a mere mode of organized private activity with which the government should interfere for those reasons only which would justify interference with other modes of organized private activity."

As to remedies, we are advised that "we may dismiss with contempt those vile political nostrums, the popular recall of decisions and the popular recall of the judges" (page 224). "In the last analysis the one supreme need is education. Our judges must be taught to think" (page 226). "There is no obstacle to the attainment of a system of justice, save our reluctance to take pains enough to think correctly" (page 283) Such pains the author takes in three chapters in which certain useful and somewhat familiar logical processes are explained and illustrated, and the blunders of lawyers and judges are pointed out in connection with the discussion of many judicial decisions and doctrines. In destructive criticism, many a telling blow is struck.

The author would have provoked less disagreement had he not as-

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cended to particulars. But then we should have missed the weapon he furnishes against all who are prone to exalt their individual predilections to the plane of eternal moral principles. Many who agree that justice and morality are the proper foundations of law will not concur in deeming it immoral to regulate corporations or to tax inheritances and the unearned increment of land. The author's method of appealing to abstractions as the criteria of social action is often employed by those who most disrelish the strong individualism which he favors. These he may inspire to question the validity and the utility of this attitude of mind, and so to make more definite the content of their own thought. Thus he may promote that education and resulting power to think, which he so earnestly advocates.

THOMAS REED POWELL.

Les Transformations du droit public. By LÉON DUGUIT. Paris, Armand Colin, 1913.—xix, 285 pp.

This little volume is an examination of the fundamental notions underlying the state, sovereignty, law and administration, with particular reference to the tendencies in France. It will produce among the students of political science something like the astonishment that filled the economists a generation ago when Ingram wrote his article on "Political Economy" for the *Britannica* on the assumption that the principles of the subject were in such a state of flux that all that could be done was to trace the somewhat sad history of the science. M. Duguit throws overboard the entire paraphernalia of political science, apparently without regret—indeed, not without some expressions of relief. The dogma of national sovereignty is gone, all gone (page 18); it is in flat contradiction with the social and political facts of modern life. It once had some reasons for existence, but never any reality. "Qu'est-ce donc que la substance de la souveraineté? Nous défions quiconque de le dire" (page 25). The dogma that government is founded on *right* is gone also. Governing persons are simply those who possess in fact the power to compel obedience. How do they obtain that power? That question is to be answered by reference to social, economic and historical forces which differ in each country. It is a simple truth that in every country there is a person or a group of persons who may impose material restraint upon others; but this is matter of fact, not of right: "ce pouvoir n'est pas un droit, mais une possibilité de fait, pas autre chose" (page 42). The doctrine of the indivisibility of sovereignty disappears with the denial of sovereignty itself.

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Constitutional law (*le droit public moderne*) is not the fundamental law of the state organizing the government and delimiting the rights of of man (page 52); it is collection of rules determining the organization of public services and assuring their regular and uninterrupted operation. Law is not the command of a sovereign state; "elle est le statut d'un service ou d'un groupe" (page 280). *Herrschaft*, *souveraineté*, *volonté générale*, *potestas*, *dominium*, and *les droits naturels et imprescriptibles de l'homme* are now being arranged among the curiosities of intellectual history—in no spirit of contempt but with full recognition of their past services, after the fashion of pragmatism.

Modern public law needs no such abstractions for a foundation. "Le droit public moderne repose tout entier sur une conception réaliste et socialiste." Its foundation is in realism, because the juridical system rests entirely upon facts, social functions imposed upon the government by the nature of circumstances. Its foundation is socialistic because the purpose of constitutional law is not to settle the boundaries between the so-called subjective rights of individuals and the so-called subjective rights of a personified state, "mais simplement de régler l'accomplissement des fonctions sociales des gouvernants" (page 281). But this new system, socialistic, realistic and objective, which takes the place of the old system, individualistic, metaphysical and subjective, makes no claims to finality. It is the work of an epoch, and destined in its time to reach the goal of all that is mortal.

Is this abandonment of old dogmas progress or reaction? Our author does not pretend to know and he thinks that the question has little meaning for science. "Est-ce un progrès ou un recul? Nous n'en savons rien. En science sociale de pareilles questions n'ont guère de sens" (page x). It may be imagined that this book will make a tempest in the land of Rousseau, where "the grand principles of the Revolution" form the stock-in-trade of those who make extensive pretension to profundity and patriotism.

CHARLES A. BEARD.

The Cambridge Medieval History. Planned by J. B. BURY and edited by H. M. GWATKIN and J. P. WHITNEY. Vol. II: *The Rise of the Saracens and the Foundation of Western Europe.* New York, The Macmillan Company, 1913.—xxiv, 891 pp.

The second volume of the *Cambridge Medieval History* covers the three centuries from Justinian to Charlemagne. When one finds this period of history characterized as primarily that of the "Rise of the

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Saracens" one expects to find the survey itself novel in perspective and treatment. As a matter of fact, Islam is hardly so much in evidence as are the Celt and Teuton; and the perspective remains substantially that of Gibbon and the text-books. But within each monograph there is a new attention to social history which makes this volume one of the most important in the long series of Cambridge histories.

It is at last clear that the historical treatment of primitive peoples must be social and anthropological, even when they appear upon the open stage of history, settle on the soil of the Empire and begin to develop institutions which furnish us still with the mechanism for national politics. One cannot understand a Frank or a Saxon by studying his institutions in the light of what they have since become. It is a correct historical perspective which enlarges upon the social aspects of peoples who have yet to achieve political institutions worthy the name. That, upon the whole, is the character of this volume. To be sure, the history which analyzes the elements of Anglo-Saxon or Frankish society is less dramatic than that which indulges in the myth-epic of the ancient "kings." But by way of this social survey we are coming to understand the complex origins of feudalism, and so to get a more just conception of the age that followed.

From this point of view the most important chapter in this volume is that by Vinogradoff, in which the author of *The Growth of the Manor* cuts his way through the intricate questions of kindred and settlement, points out the great significance of the breaking of the Germanic kindreds, and the strength acquired by the semi-artificial organizations which took their place. This is a story which no one has yet told in simple English. Professor Pfister continues his survey of the Frankish history. It must be a painful experience, however, for such a careful scholar to read the English version of his text. Let us hope that the translation will be better in the future. The origins of the Slavonic peoples has fallen into the hands of a historian, Dr. Peisker of Graz, who traces their original racial movements back to the marshes of Polosie mainly by the roots of their language. The section is well written; but one has reservations as to the reliability of a narrative which risks such principles of analysis. Considerable space is given to Celtic and Teutonic religions, though one wonders what the editors meant by inserting this material between the account of the Slavs and that of England and of Charlemagne.

Indeed the whole volume is a puzzle in arrangement, a fact which perhaps emphasizes all the more the variety and distinct quality of its contributions. It is less a history than a collection of monographs;

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and this being so, there is no excuse for the editors to claim, as they do, that the section on the Roman law is the first since Gibbon to handle that subject in general terms and historically. The *Encyclopædia Britannica*, published by the same press, has articles not less helpful, and certainly as historically conceived as that by Dr. Roby. There is one American contributor, Professor G. L. Burr of Cornell, who writes on the Carlovingian Revolution and the Frankish Intervention in Italy. His contribution shines in this company not less in the skill of its compact yet graceful narrative than in its scholarship. Twenty-seven historical charts are given in the appendix.

J. T. SHOTWELL.

English Industries of the Middle Ages. By L. F. SALZMANN. Boston, Houghton Mifflin Company, 1913.—x, 260 pp.

The English Scene in the Eighteenth Century. By E. S. ROSCOE. New York, G. P. Putnam's Sons, 1912.—xii, 293 pp.

These two books represent the treatment of social history from opposite poles. The first is intended as an introduction to the industrial history of the Middle Ages. The plan is to deal with each industry by itself and thus attempt to present its development, less as a changeful part of a varying social complex than simply as an industry, with a description of its processes and an account of its extent. There are chapters on mining of coal, iron, lead and silver, and tin, on quarrying, metal-working, pottery, cloth-making, and brewing. A final chapter takes a general survey of the control of industry, and a careful index serves to coördinate the material. The book is well done. It is a scholarly production, showing ready familiarity with the rather technical documents into which are tucked away clues as to the extent of mediæval trade and history. Municipal records and material at the Record Office and the British Museum have been freely drawn upon, and for the first time we have a history of the mediæval phase of these industries. The *Stanneries* by G. R. Lewis, and *The Annals of Coal Mining* by Galloway are the only partial predecessors. It is much to be regretted that Mr. Salzmann has not been able to follow out his original plan of publishing a companion volume of documentary materials. It must be admitted that the volume is not excitingly interesting to any but one already rather deep in the subject. There is too much detail of an unimportant type—unimportant except for a historian intent upon rescuing every trace of industries which left but little

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at best. The data are not worked over into a readable synthesis. Even the chapter upon the control of industry fails to convey a clear impression. The material is too much with us. As a manual for reference the book will fill a distinct place; but it will never be read on a summer afternoon.

As one might gather from the title, the other volume is a book for the library table of the country gentleman. But we are glad to recommend it to him. It is an enlightened survey, based upon the results of recent scholarship, and not a melancholy restatement of time-worn things from Horace Walpole and Dr. Johnson. There is a survey of London and of its society, which, of course, we follow in season to Bath, the "City of Pleasure," that peculiar product of the eighteenth century. We must admit that we have rather too much of Bath before we leave it for Liverpool. Here any one with a real curiosity as to the exact condition of English shipping is doomed to disappointment. There are few details; and dainty bits of description do not make up for their absence. We are kept, as it were, in the inn-parlor instead of moving around town as a tourist should. The second part of the book deals with the nobility and the middle class, and it is interesting to find the account of the Industrial Revolution placed in such company; for the author seems mainly interested in the arrival of the *nouveaux riches*—the Wedgewoods and the like—who are to find their way now into the ranks of the upper middle class, in spite of their origin. After this, who will say that an English country gentleman is not interested in industrial history! The clergy, the woman of letters—meaning Fanny Burney—and the brutalized navy officer are all passed in review; and the last chapter furnishes, as an epilogue, a few words on the unfortunate peasant, for whom, of course, one is very sorry, but the situation can hardly be helped. One must not take the book too seriously; but then no one is likely to do so. It is well gotten up.

J. T. SHOTWELL.

The Viceroy of New Spain. By DONALD E. SMITH. Berkeley, University of California Press, 1913.—99–293 pp.

Despite the comprehensiveness of its title, this monograph covers only a brief period in the history of the viceroy of New Spain. The author, in his introductory statement, restricts the study to the eighteenth century (page 100), and, in his final chapter, he claims to have made a "complete exposition" of the functions of the viceroy only during the closing years of the Spanish régime (page 276). The latter

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statement appears to be the more accurate estimate of the work actually accomplished. The fact, as is indicated by the references, that most of the details and events introduced as illustrative of the operation of the viceregal institution are taken from the administration of Revillagigedo (1789–1794), tends to restrict the work, as an intensive study, within even more narrow limits.

Dr. Smith has divided his book into seven chapters. In the first, the introduction, there is, in addition to the announcement of purposes, an incisive analysis of the functions of the viceroy, and a statement of the causes and effects of the so-called reforms of José de Gálvez. It is to be regretted that the author did not in this or some later chapter include a more adequate and complete description of the governmental and administrative system of which the viceroy was the head. In Chapter II, which deals with the relations of the viceroy with the home government, Dr. Smith shows the completeness with which the imperial control was maintained. The discretionary powers of the viceroy even in petty matters are therein reduced to a minimum. The third, fourth, and fifth chapters constitute the institutional study of the viceroy in his respective capacities of governor, captain-general, and vice-patron. The final chapters are devoted to a fuller account of the reforms of Gálvez than was possible in the introduction, and to the author's conclusions.

The most important portion of the book is that devoted to the analysis and presentation of the powers and functions of the viceroy. These chapters are open to criticism on at least two points: the meagerness of sources cited and lack of consistency in the method of organization. A reference to the footnotes will demonstrate that the author has relied perhaps too unreservedly upon the *Instrucción reservada* of Revillagigedo for authoritative justification of his interpretation. In these three chapters, out of 249 references, 163 are citations of this document, while the better known Laws of the Indies are referred to only once (page 127) and that in Chapter II. As regards the second objection, it is to be conceded that a classification of the functions of the viceroy is one of the most puzzling and difficult matters connected with a study of this subject. Dr. Smith recognizes this fact, and on page 102, remarks: "There is almost never discernible in the duties of a Spanish official in the colonies that distinction between civil and military, executive and judicial functions which are so fundamental with us." We are warned repeatedly that the duties are not well-defined and separable; yet the author proceeds to separate them, and the measure of success which he attains in this treatment is to that

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degree convincing that they are susceptible of division and distinction. The longest and most valuable of the chapters is that which treats of the viceroy as captain-general. Although there is some variation as to the estimate which the author places upon the importance of the military in comparison with the civil powers of the viceroy (see pages 103, 160, 193–196, 228), the study of the military system organized in New Spain deserves high praise.

The absence of a table of contents, an index, and similar aids to the reader and student, and the presence of numerous typographical errors are to be deplored. In spite of this and the other facts noted above, the book—the pioneer in this field—is rich in interesting and valuable information which should prove of real service to the student of Spanish institutions in the New World.

W. W. PIERSON, JR.

COLUMBIA UNIVERSITY.

C. W. S. The Jubilee History of the Coöperative Wholesale Society, Limited, 1863–1913. By PERCY REDFERN. Manchester, The Coöperative Wholesale Society, 1913.—viii, 439 pp.

Mr. Redfern, in compiling his history of the English Coöperative Wholesale Society, has not been concerned simply with a glorification of the success of the Society such as might be expected in a jubilee publication. There was undoubtedly some temptation to indulge in heroics in describing the history of a business enterprise that in 1912 had a turnover of £29,732,154 with net profits of £613,007. More remarkable even than the size of the business is the fact that only twice during the fifty years of its existence did the C. W. S. fail to show a growth in its business. In 1879 and in 1896, both years of depression and bad trade, sales fell off by about £100,000 as compared with the preceding years; but after the first years of tremendous percentages of increase, possible only to youthful undertakings, there were with these two exceptions steady increases year by year, varying from about three per cent to twenty-two per cent. It is not, however, either the size or the expansion of the business of the C. W. S. that is Mr. Redfern's chief interest. He traces the story chronologically, beginning with a very brief review of coöperative experiments previous to the foundation of the Rochdale Pioneer Coöperative Society. Several attempts to establish wholesale coöperative enterprises were made before 1860; but none of these achieved a permanent existence. It took three years of effort and a bill in Parliament to get the C. W. S. started, and it was October, 1863, before the first meeting of the

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legally constituted coöperative society was held in Manchester, and March, 1864, before business was actually started.

There is no effort on Mr. Redfern's part to exaggerate either the difficulties encountered by the C. W. S. or the triumphs achieved. But difficulties there were in abundance, not the least being the distrust of the managers of the various retail coöperative stores whose support was necessary to the success of the Wholesale Society. Reliable goods, just weights and measures and fair prices, however, had their due effect, especially as the stores had suffered greatly from dishonesty on the part of the wholesalers from whom they had been compelled to buy such goods as sugar and flour. Gradually the C. W. S. expanded into the manufacturing business, and set up flour mills and factories for soap, confectionery, shoes, tobacco, cocoa, hosiery, cotton cloth, clothing, tinplate and tinware, furniture and polishes. It also established purchasing agencies in the United States, South America, France, Greece, China, Ceylon and other countries, and followed up this action by securing currant islands in the Ionian Sea, as well as fruit and dairy farms in England and Ireland. From time to time the powers of the C. W. S. were enlarged to allow it to undertake banking and insurance business, and the Society also invested in steamships, one of which, the "Pioneer," was the first vessel to reach the new port of Manchester when the Ship Canal was opened in 1896. These two boats trade with Rouen in France, but the C. W. S. has not found it economical to increase its fleet in order to bring its cargos from more distant countries.

The phase of the C. W. S. activities which apparently affords Mr. Redfern the most satisfaction is the treatment of the employees. As befits a democratic institution, founded for the benefit of the working classes, the C. W. S. endeavors to be a model employer. Minimum wage rates and security of tenure for its work-people are the main lines of its policy. It also makes many efforts to improve conditions for the workers, and its factories and workshops are notable for their high standard of cleanliness and ventilation and for the rest rooms and conveniences provided for the men and women employed in them. The many enterprises of the C. W. S. have not been free from strikes. The most serious of these were at the shoe factories of Leicester in 1886 and 1892. Neither strike was on the question of wages. The first had to do with a rivalry between two factories in which the workers of one thought themselves aggrieved; and the second with the tyranny of an individual foreman. Except for these and some other minor disputes the employees of the C. W. S. have shown themselves contented with their conditions; and it has been the pride of the Society that it

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has not only set a standard in wages and conditions for employees, but that it has also encouraged the establishment and development of trade unions among its workers. The history of the fifty years of activity of the C. W. S. proves the feasibility of the idea with which it was started, an idea which was summarized by one of its advocates as "the bringing the producer and consumer together, organizing labor so as to produce for known wants, and serving the consumer as nearly as possible at cost price on condition that he find the necessary capital in the first instead of in the last instance." Mr. Redfern has added a chronology of the Society and brief biographies of the men who brought it into existence and carried it through its fifty years of life.

EDWARD PORRITT.

HARTFORD, CONNECTICUT.

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RECORD OF POLITICAL EVENTS

[From November 5, 1913 to May 1, 1914]

I. INTERNATIONAL RELATIONS

BALKAN RELATIONS—The resumption of **Turko-Grecian** diplomatic relations late in October, following a rupture which had for a time threatened war, (see last RECORD, p. 708) resulted on November 13 in the conclusion of a treaty providing for the settlement of religious, racial and financial affairs in Grecian Thrace and Macedonia. The apportionment of the Ægean Islands, however, remained unsettled, awaiting action by the powers, as stipulated by the Treaty of London (see last RECORD, p. 706). On February 12 the powers presented at Constantinople and Athens a collective note restoring Imbros, Tenedos and Castellorizo, off Asia Minor, to Turkey and awarding to Greece all the other islands, on condition of her agreement not to fortify them and to prevent contraband trade between them and the Turkish mainland. The settlement was accepted by both governments, though not without a strong representation from Turkey that she was entitled to all the islands near the Dardanelles, particularly Chios and Mytelene.—With the settlement in January of the **Serbo-Bulgarian** boundary by the arbitration of the Russian General Holmsen, and the **Rumanian-Bulgarian** agreement, a few days later, to appoint a mixed commission to settle the various questions raised by the Bulgarian cession of Turtukai and Baltchik, Balkan diplomatic relations resumed a normal status for the first time since the outbreak of the first war. **Greco-Bulgarian** relations were not resumed till April, owing to the alleged violation by Greece of the agreement in the Treaty of Bucharest to return all prisoners. —In **Albania**, the accession of Prince William of Wied to the throne was delayed till February 21 owing to his unwillingness to assume the government unless guaranteed adequate financial support by the powers. In the interval, there ensued at Avlona, the provisional capital, an ill-planned and futile attempt by a party of Turkish military, presumably acting for Izzet Pasha, to overturn the provisional government. A few days later, the announcement that Greece had consented to evacuate the Koritza district, awarded by the Ambassador's Conference to Albania (see last RECORD p. 709), without obtaining any guarantees for the treatment of the Epirote inhabitants, was followed by a revolt among them, led by the resident prelates of the Greek church. Upon the Greek evacuation the Epirotes seized Koritza and several other places, but were shortly prevailed upon to surrender them to the Albanian authorities. The revolt spread rapidly over the whole of the adjacent territory. The persistence of the Epirote insurgents and their surprisingly good equipment gave rise to strong sus-

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picions that they were aided if not instigated by Greece—suspicions which were confirmed by the readiness with which Greece accepted the suggestion of Austria-Hungary, that she postpone completing her evacuation till Albania should manifest her ability to maintain order. Later in April news reached Durazzo that the extreme north-west corner of Albania was also in a state of revolt, a new "autonomous state" having been proclaimed there under circumstances which strongly indicated Servian support.

GENERAL EUROPEAN RELATIONS—After the passage of the three-years' service law in France some of the continental press alleged that its adoption had been forced by Russia, and that her insistence upon military expansion by France was endangering the **Dual Alliance.** Nevertheless, no public demonstration of friendliness was attempted by the two governments. The Russian government, however, in February vetoed an attempt upon the part of its chief armament makers, the Putiloffs, to ally themselves, for the purpose of obtaining increased capital, with the Krupp interests, compelling them instead still further to associate themselves with the Schneider firm, the leading French armament makers. Shortly before, the Russian government had manifested its friendliness to the third member of the **Triple Entente** by permitting the Vickers firm, a leading English arms manufacturer, to establish a £1,500,000 plant in Russia (at Tsaritsyn) and granting it exclusive rights in several important branches of arms manufacture. Especially in view of the rumored weakening of the Dual Alliance, the visit of the British royal couple to Paris in April, for the purpose of renewing and strengthening the Entente, was anticipated with great interest. The suggestion was enthusiastically discussed by a considerable portion of the French press, that the Entente between the two nations should be cemented by a formal alliance. The suggestion met with a varied reception in the British press.—The members of the **Triple Alliance** again indulged in public demonstrations of friendship, the Emperor William visiting the Austrian Emperor and meeting the King of Italy, the latter accompanied by his foreign secretary. The obvious intention of Austria-Hungary to develop a claim of special interest in Albania was, however, displeasing to Italy, who attempted, though without success, to secure the withdrawal by Austria-Hungary of her assertion of her responsibility for the special protection of the Catholics in Albania.—A succession of untoward incidents put a severe strain upon **Russo-German** relations. The "Military Mission" sent by Germany to Constantinople (see p. 382, *infra*) was strongly objected to by Russia, and formed the subject of threatening protests also in the inspired journals of St. Petersburg, though without visible effect upon the German policy. The continued activity of the Russian military and naval authorities, in raising the standard of equipment and in perfecting the railroad facilities requisite for rapid mobilization on the German frontier, their unprecedented action in detaining 400,000 reservists for four months beyond their regular term, thus raising the number of peace effectives to 1,700,000, the heavy increases made by them in their frontier

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forces, together with the publication in the Russian press of apparently not unauthorized statements that the Russian army should be prepared to fight two Germanic Empires, were taken advantage of by the militarists in the Triple Alliance to create popular sentiment in favor of increased armaments, with particular reference to the budget then pending in Germany. The conviction in November, simultaneously in Berlin and Budapest, of alleged Russian military spies, followed in March by the conviction at Vienna on a similar charge of several Austrian officers, added fuel to the flames; and for several days, the press of both countries, and particularly that of Germany, including publications whose utterances are regarded as at least semi-inspired, were unprecedently outspoken in their Russophobic utterances. It was reported in April that the Russian ministry of war was prohibiting its contractors from placing any orders with German firms. Largely, doubtless, because of its strained relations with Russia, the German government appeared especially desirous of improving **Anglo-German** feeling. In his opening speech before the Reichstag, the chancellor referred at length to the growing friendship of the two nations, as did also Admiral von Tirpitz and the foreign secretary in speeches significantly emphasizing the prime necessity of naval expansion in the Baltic rather than in the North Sea.—Despite occasional diplomatic interchanges between the other powers on the subject, no steps were taken by them to bring to issue Italy's continued failure to evacuate the islands in the Ægean held by her in favor of Turkey (see last RECORD, p. 711). As compensation for the expenses incurred by her in the capture of Rhodes, she demanded valuable concessions in the neighborhood of l'Adalio, in Asia Minor.

ASIATIC RELATIONS—Chinese railroad concessions continued to engage the attention of rival financial groups with government backing. The persistent attempts of the interests behind the Lanchowfu-to-Haichow trunk railroad, nominally Belgian, but in reality, it was alleged, Russian and French, to change the eastern terminus to a point near Shanghai (Haimenting) in place of Haichow, were believed by a portion of the British press to imperil the British claim of exclusive rights in the Yangtsze, especially in view of the recent French invasion at Pukow. These fears were, however, set at rest, at least for the time, by the action of the British government, in March, in informing the Chinese government of its intention to enforce its predominance in the Yangtsze, and by the award, shortly after, to the British and Chinese Corporation, a British concern, of the contract for financing and constructing the extension of the Shanghai-Nanking Railway to Ping-Siang (a distance of five hundred miles) where it will be united into one system with the railroad to Chuchow, which this corporation also controls. When these roads are eventually united, as is planned, with the Shanghai-Hanchow railroad recently acquired by the same interests, the system will control most all of the southeastern seaboard. The southwestern provinces were also provided for in preliminary agreements with the Banque Industrielle, for the construction of a 400-mile road

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from Yunnanfu to Chungking. Of international significance also, yet involving apparently no action by the United States government, were the contracts entered into, one with the American Red Cross Society for a loan of £4,000,000 to be expended under the direction of the society in flood-prevention works in the Hwai River area (comprising chiefly the provinces of Kiangsu and Nganhui), and the other with the Standard Oil Company, for the formation of a company to develop Chinese oil fields, in which the government is to hold thirty-seven and one-half per cent of the stock. The latter contract, it was reported, was forcefully but ineffectively opposed by the Japanese government as inimical to its relations with China, Japan having applied for oil concessions without success on two former occasions.—The recognition by China of the autonomy of **Outer Mongolia**, following such recognition by Russia in July (see last Record, p. 713), was accorded in November, by the signing of joint declarations by Russian and Chinese ministers. These declarations recognized Chinese suzerainty over the territory, but stipulated also that Mongolians were to be independent of China in matters relating to their trade and industries, and provided that in a joint conference to be held subsequently to define the boundary of Outer Mongolia, the Russian, Chinese and Mongolian representatives were to meet upon an equal footing.—Considerable surprise was expressed at the proposal made in December by the Russian Ambassador at Peking to the representatives of the other powers that, as order had been restored in the region, the **foreign troops in Northern China** should be withdrawn. The proposal was seconded by the Chinese government, but opposed by the Japanese diplomats, who seemed to question Russia's motives in desiring the foreign evacuation of a region where her own influence was continually increasing. No action was taken by the powers.—It was several times reported that the **former Shah of Persia**, resident in Russia, was attempting to secure assistance from the government of that country in regaining the throne. A visit which he made to Berlin, ostensibly for his health, was abruptly terminated, due, it was reported, to pressure from St. Petersburg applied at the emphatic request of the German Foreign Office.—A settlement of the Turko-Persian boundary question was reached in November by representatives of the Turkish, Persian, Russian and British governments. The major portion of the boundary was definitely fixed, and it was agreed that should the Turkish and Persian governments fail to come to agreement as to the remainder of the boundary, it should be fixed by British and Russian arbitrators.—**Asia Minor railroads** were the subject of conversations in the autumn, between the German Foreign Office and the French Ambassador at Berlin, the latter representing also the interests of Russia. In February, an agreement was initiated, which, with supplementary agreements understood to be contemplated, will in effect subject all railway matters in the north of Asia Minor to the influence of France and Russia, those in Syria to that of France, and those in the Bagdad sphere to that of Germany.

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AMERICAN RELATIONS.—The relations between the **United States** and **Mexico** (see last RECORD, p. 713), continued to cause deep anxiety during the winter months. John Lind left Mexico City on November 12, when Huerta persisted in convening the newly-elected Congress; and in his annual message of December 2 (see *infra*, p. 356), President Wilson indicated that he regarded the situation as serious. His favorable attitude towards the insurgents was shown by the sending of an agent to confer with Carranza, and by the lifting of the embargo on the shipment of arms and ammunition across the border. When on February 15 a Texas ranchman named Vergara was killed by Mexican soldiers, the secretary of state made peremptory demands that those guilty should be punished, and Huerta promised compliance. On February 17 a British subject named Benton was murdered at Juarez, where the United States had undertaken to look after British interests. The rebel leader, Villa, informed the United States, falsely as it afterwards appeared, that Benton, having threatened his life, had been court-martialed and shot; and an alleged transcript of the proceedings was furnished. Permission to exhume the body was first accorded and then withdrawn. An investigation undertaken by the British government showed that Benton had been murdered at Villa's headquarters. On April 9 a boatload of sailors from the gunboat Dolphin, landing at Tampico within the federal lines and the zone of military operations, were placed under arrest, though immediately afterwards released. Both the Mexican federal commander and Huerta expressed regret for the occurrence. Rear Admiral Mayo, however, supported by his superior at Vera Cruz and by President Wilson, demanded a salute of twenty-one guns. This Huerta refused to concede unless the United States agreed in writing to return the salute, holding that his apology and the punishment of the offending officer were ample amends. On April 14 Rear-Admiral Badger was ordered to proceed to Tampico with the entire North Atlantic fleet of eleven battleships, and on the twentieth President Wilson asked Congress to approve the use of force in the vindication of American rights and national dignity (see *infra*, p. 356). The next day, acting on instructions from Washington, Rear-Admiral Fletcher began the occupation of Vera Cruz, obtaining full possession on the twenty-first. His losses were 12 killed and 50 wounded. On April 30, 9000 regular soldiers under Brigadier-General Funston occupied the city, the sailors returning to their ships. Meanwhile diplomatic relations had been severed entirely, passports having been handed to the American *chargé* at Mexico City and to the Mexican *chargé* at Washington. There seemed at first some possibility that the various factions in Mexico would unite in resisting the Americans. To accomplish that end Huerta issued a general amnesty on April 23; and Carranza, in a note to Mr. Bryan, requested the evacuation of Vera Cruz, saying that the hostile acts of the United States "will drag us into an unequal war." On April 25, however, renewed warfare between federals and rebels was reported. On the same day the plenipotentiaries of Argen-

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tina, Brazil and Chile, at Washington, tendered their "good offices for the friendly settlement of the conflict between the United States and Mexico," the same offer being extended to Huerta and Carranza. The United States promptly accepted; before the end of the month the others gave their adhesion "in principle." When an armistice was proposed as a preliminary to negotiations, Carranza alone refused to acquiesce.—Repeated rumors that the Huerta government in Mexico was receiving substantial financial support from the Pearson oil interests, evoked from Lord Cowdray, head of the Pearsons, a public denial that his firm had had any financial connection with the Huerta government beyond a trivial subscription to a public loan.—At the same time the Pearsons withdrew from negotiations for important petroleum concessions in Colombia and **Ecuador**, ostensibly because of hostile public sentiment in those countries, but in reality, it was alleged, because of the successful opposition of American oil interests. A contract for the sanitation of Guayaquil awarded a few months previously by the Ecuador government to a British firm contained a stipulation that no American capital should be permitted to participate in the work. In view of the turbulence prevailing in **Santo Domingo** the American minister announced that commissioners appointed by the United States would supervise the elections of December 15. Twenty-nine officials were detailed from Porto Rico to assist in this work. In answer to protests from the Dominican government, the secretary of state declared that the commission would act simply as "a body of friendly observers." Afterwards the election was pronounced to have been the "fairest and freest ever held on the island."—American marines were landed at Port-au-Prince, **Haiti**, on January 27 to prevent disorder after the approach of revolutionary forces and the resignation of the president.—Although President Wilson urged in December that the proposed treaty with **Nicaragua** (see last RECORD, p. 714), should be favorably reported in the Senate, no action was taken on it.—On April 8 a treaty between the United States and **Colombia** was signed at Bogota. Under its terms, as published in the newspapers, Colombia recognizes the independence of Panama, receives a sum of $25,000,000, and enjoys free use of the canal in perpetuity. The United States expresses sincere regret for anything which may have altered the cordial friendship existing between the two countries.—On February 12 the United States formally recognized the new government of Peru.—The United States concluded **peace treaties**, imposing delay and deliberation in the case of misunderstandings which fail of diplomatic adjustment (see last RECORD, p. 714), with Nicaragua and the Netherlands in December and with Denmark in April. A similar treaty with Great Britain was being negotiated at the close of this RECORD.—After long delay the United States ratified on February 21 general **arbitration** treaties with Great Britain, Italy, Japan, Norway, Portugal, Spain, Sweden and Switzerland. The only matters not subject to arbitration are those affecting the vital interests, ndependence or honor of the two contracting parties or concerning the in-

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terests of third parties. The Senate rejected amendments which would have excluded questions affecting Panama tolls, the Monroe doctrine, immigration and the admission of aliens to the public schools.

II. THE UNITED STATES

THE ADMINISTRATION.—In April the treasury department announced that the customs receipts for the year ending June 30 would probably exceed the estimated receipts by more than $24,000,000.—The organization committee of the new reserve bank system announced in April that under the terms of the currency act (see *infra*, p. 357) they had divided the country into twelve reserve districts and had designated a city in each for the location of the reserve bank. The cities designated were: Boston, New York, Philadelphia, Cleveland, Richmond, Atlanta, Chicago, St. Louis, Minneapolis, Kansas City, Dallas, San Francisco.—On January 27 the president signed an executive order establishing permanent civil government in the **Panama Canal** zone on and after April 1, the present commission thus being replaced by a governor. He nominated Col. George W. Goethals as governor.—By order of the secretary of agriculture, on February 7, the Board of Food and Drug Inspection was abolished, its functions to be henceforth discharged by the chief chemist, Dr. Carl Alsberg.—In a decision interpreting the term "moral turpitude" in the immigration law the circuit court of appeals upheld the lower court in admitting to the United States Edward F. Mylius, an Englishman who had been convicted of libeling the king of England (see RECORD of June, 1913, p. 356). The court held that the publication of a defamatory libel did not necessarily involve moral turpitude and that the special boards of inquiry could not go behind the record and consider the special circumstances of each case. Appeal was taken to the Supreme Court.—The annual report of the secretary of war recommended a reserve system in the army, improvement and reorganization of the militia, and reform in the contracts of enlisted men. It did not advocate any rearrangement of army posts for the distribution of the troops in mobile units, as other matters required consideration first, particularly the securing of an adequate supply of field artillery.—In his annual report the secretary of the navy recommended that Congress should provide two battleships, eight destroyers and three submarines, just half the number of vessels which the General Board urged as necessary, and that the government should construct an armor plant and produce oil for the navy in the reserve lands of California. He suggested a conference of the powers to discuss the permanent reduction of naval burdens.—Addressing the convention of the American Federation of Labor at Seattle on November 12, the secretary of labor pledged the coöperation of his department with the trade-union movement. In February he asked for the enactment of a law forbidding the interstate transportation of guards engaged by private persons for service in labor controversies.—In his annual report the secretary of the interior strongly urged a "fuller and freer use of

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our natural resources" by means of a leasing system with ample reservations for public use. He proposed the creation of a commission which would administer all the natural resources of Alaska, and the building of a railroad which would charge lower rates than would justify private investment.—An order of the postmaster-general, effective on January 1, made some reduction in parcel-post rates and increased the weight limit to fifty pounds in the first two zones and to twenty pounds in the other six. In his annual report he recommended the acquisition of all telephone and telegraph lines. The department is now earning a small surplus.—Among the more important nominations were: Dr. William C. Gorgas to be surgeon-general of the army with the military rank of brigadier-general; Dudley Field Malone, collector of the port of New York; Brand Whitlock, minister to Belgium; John Skelton Williams, comptroller of the currency; Robert Lansing, counsellor of the state department, vice John Bassett Moore resigned; Winthrop M. Daniels and Henry C. Hall, interstate commerce commissioners. Henry M. Pindell resigned as ambassador to Russia immediately after his nomination had been confirmed by the Senate, assigning as a reason the embarassment arising from the public criticism of the appointment.

CONGRESS.—The special session of the sixty-third Congress closed and the first regular session began on December 1, no intermission occurring between them.—The **Mexican situation** (see *supra*, p. 353) was brought to the attention of Congress in the president's message of December 2. Referring to the "usurped authority in Mexico" as the "one cloud upon the horizon," he declared that there could be no certain prospect of peace in America until American policy was understood to preclude the countenancing of such "pretended governments." His attitude was described as one of "watchful waiting." In another message, delivered on April 20 after the incident at Tampico, the president asked approval for the use of the armed forces to vindicate the rights and dignity of the United States against Huerta. "There can be in what we do no thought of aggression or selfish aggrandizement." This country, the president hoped, would under no circumstances be forced into war with Mexico; but if war should come, the only object would be to enable the Mexican people to set up again their own laws and their own government. In response the House passed a resolution justifying the proposed course of the president, the vote being 337 to 37. In the Senate a substitute resolution was offered omitting the name of Huerta and using more general terms in reference to "the affronts and indignites committed against the United States." Though opposed by Senators Lodge and Root, who believed that the serious action contemplated should be based upon the outrages committed by both factions in Mexico, the resolution carried by a vote of 72 to 13 and was subsequently adopted by the House after the outbreak of hostilities at Vera Cruz.—On April 23 attacks were made upon the president by Republican senators who accused him of showing undue favor to the rebels.—In his

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message of December 2, referred to above, the president advocated the enactment of laws providing for a system of rural credits, a government railroad in Alaska, presidential primaries and the more explicit regulation of trusts. A special message of January 20 dealt with proposals for the control of corporations. Its tone was reassuring. "The antagonism between business and government is over. We are now about to give expression to the best business judgment of America." Bills embodying the proposals were afterwards introduced into Congress (see *infra*, p. 358). In a second special message of March 5 the president urged Congress to repeal the provision of the Panama Canal Act of 1912 which granted exemption from the payment of canal tolls to American coastwise ships (see RECORD of December, 1912, p. 737). The request was made in support of the foreign policy of the administration; and it was intimated that "matters of even greater delicacy and nearer consequence" imperatively demanded such action.—The **currency** bill (see last RECORD, p. 17), which had been held in committee for more than two months, was reported to the Senate without recommendation on November 22. The cleavage of opinion among the Democrats, evidenced by the presentation of alternative bills, made it necessary to agree upon modifications of the bill in caucus. In its final shape it had the support of all Democrats as well as of six Republicans and one Progressive. In the House the conference report (which, among other things, eliminated the guarantee of bank deposits) was adopted on December 22 by a vote of 298 to 60, only two Democrats opposing the bill, and 34 Republicans and 11 Progressives supporting it; in the Senate the vote was 43 to 25. The passage of the bill was commonly regarded as fresh proof of the president's power of bending Congress to his will.—Another administration measure, which became law in March, provided for the construction of a government railroad in **Alaska**, the maximum length to be 1000 miles and the maximum cost $35,000,000. The president was authorized to select a route from tidewater to any point in the interior, and to provide for operation by the government or by a private company. In March a bill regulating the use of Alaska coal lands was favorably reported in both houses. Under its terms part of the deposits would be reserved by the government for the double purpose of supplying the navy and checking monopoly; the remainder would be leased to the highest bidders in small tracts and for indeterminate periods. Another bill proposes to apply similar regulations to the oil, phosphate and coal lands of the western states.—On February 4 the Burnett **immigration** bill, prescribing a literacy test, passed the House of Representatives with little adherence to party lines, the vote being 241 to 126. A clause which would have excluded all Asiatics except those having rights under existing treaties or agreements was rejected after the president had intimated that it would lead to diplomatic embarrassments. The bill imposes a tax of $6 on bachelors and married persons unaccompanied by their families, excludes persons identified with organizations which seek governmental reforms by

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violent means and provides penalties for the bringing in of insane persons. On March 19 the bill was reported favorably in the Senate.—In conformity with the desires of the president, as expressed in his message of March 5, a bill to repeal the exemption of American coastwise ships from the payment of Panama **canal tolls** was introduced in both houses on March 13. From the first it became evident that the president would have difficulty in maintaining his ascendancy over the party. Although the bill was reported favorably in the House, both Speaker Clark and Mr. Underwood aligned themselves with the opposition. On March 31, however, after a spirited debate, the bill passed the House by a vote of 247 to 162. Fifty two Democrats opposed the president; 23 Republicans and 3 Progressives supported him. In the Senate, though debate occurred on the floor, the bill remained in committee throughout the month of April, the time being occupied mainly with formal hearings.—Shortly after the President's message of January 20, in which he had recommended legislation for the control of **trusts**, the tentative draft of four bills was given to the press. These bills dealt with trade relations, the definition of the Sherman law, interlocking directorates and the proposed trade commission. It soon appeared that, before being submitted to Congress, they would be subjected to substantial modification and united in a single measure.—On December 19 the president signed a bill permitting the city of San Francisco to draw its water from the Hetch-Hetchy valley, a part of the Yosemite Valley National Park.—On December 8 a report of the lobby investigation (see last RECORD, p. 717) was rendered to the House arraigning the activities of special agents in Washington and convicting Representative McDermott of "acts of grave impropriety." A minority report urged the expulsion of McDermott. By a vote of 134 to 34 the whole matter was referred to the Judiciary Committee.

THE FEDERAL JUDICIARY.—Among the more important decisions of the Supreme Court were the following: No appeal may be taken to the Supreme Court from the judgment of a state court restraining the board of elections from submitting a new constitution to the electors in accordance with a state statute, since such a judgment affects their official and not their personal rights (Marshall, Governor of the State of Indiana *v.* Dye, 231 U. S. 250). A Montana statute imposing a tax on insurance corporations doing business in the state measured by the excess of premiums received over losses and expenses incurred within the state is not unconstitutional as a burden on interstate commerce (New York Life Insurance Company *v.* Deer Lodge Company, 231 U. S. 493). A Massachusetts statute imposing an excise tax on certain classes of foreign corporations is not unconstitutional as a burden on interstate commerce, nor does it deprive the corporations of property without due process of law or deny them the equal protection of the law (Baltic Mining Company *v.* Massachusetts, 231 U. S. 68). The provisions of the Illinois child labor act requiring the employer at his peril to ascertain the age of a person employed is not unconstitutional as deny-

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ing due process of law or the equal protection of the law (Sturges and Burn Manufacturing Company *v.* Beauchamp, 231 U. S. 320). In dealing with interstate carriers, the fact that some of them are also engaged in private business does not compel Congress to legislate concerning them as carriers in such a manner as not to interfere with such private business (Delaware, Lackawanna and Western Railroad Company *v.* United States, 231 U. S. 363). The establishment of railroad rates wholly intrastate by a state railroad commission is not an unwarrantable interference with, or a regulation of, interstate commerce (Louisville and Nashville Railroad Company *v.* Garrett, 231 U. S. 298). No more than the patent statute was the copyright act intended to authorize agreements in unlawful restraint of trade and tending to monopoly in violation of the Sherman Act (Straus *v.* American Publishers' Association, 231 U. S. 222). While a custom of railroads cannot justify a violation of a mandatory statute, a custom which has the sanction of the Interstate Commerce Commission is persuasive of the meaning of that statute (Pennell *v.* Philadelphia and Reading Railway Company, 231 U. S. 675). A municipality cannot exact a local license from an express company doing an interstate business either as a condition precedent to the transaction of business within the city, or as an annual license fee (Barrett *v.* City of New York, 34 S. C. R. 203). The refusal of a state court to treat a decree of dismissal in the federal court as conclusive of a point left open did not impair the obligation of that decree as a contract (Swift *v.* McPherson, 34 S. C. R. 239). The lessor of an intrastate railway to an interstate railway carrier is, through its lessee, a common carrier engaged in interstate commerce within the meaning of the Employers' Liability Act where it is responsible for the negligence of its lessee (North Carolina Railroad Company *v.* Zachary, 34 S. C. R. 305). The addition of poisonous substances to an article of food in such minute quantities that the health of consumers cannot be injured is not condemned by the Pure Food and Drugs Act (United States *v.* Lexington Mill and Elevator Company, 34 S. C. R. 337). Railroads are not arbitrarily discriminated against and thus denied the equal protection of the law by an Ohio law imposing an excise tax on their gross earnings, but not taxing other public utilities within the state (Ohio River Railway Company *v.* Dittey, 34 S. C. R., 372). The uniformity clause of the Constitution is not violated by the tonnage tax imposed on foreign-built pleasure yachts owned by citizens because it is not imposed on an American-built yacht under similar circumstances (Billings *v.* United States, 34 S. C. R. 421). The exaction of a double liability from a railroad company failing to pay within sixty days a claim for damage caused by a fire set by a locomotive, except where owner recovers a less sum as damages than the amount of any tender by the company, is a taking of property without due process of law (Chicago, Milwaukee and St. Paul Railway Company *v.* Kennedy, 34 S. C. R. 463). A Massachusetts statute forbidding the employment of women for more than ten hours a day or fifty-six hours a week in any manufacturing or mechanical establish-

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ment does not deprive employers of the liberty of contract protected by the Fourteenth Amendment (Riley *v.* Massachusetts, 34 S. C. R. 469).

STATE AFFAIRS.—Proposed amendments to the state constitutions providing for **women suffrage** were defeated in the legislatures of Kentucky, Maryland, Mississippi, South Carolina and Virginia. By favorable action of the legislatures amendments will be submitted to the people in Massachusetts, Montana, Nebraska, New Jersey, Nevada and the two Dakotas.—In the elections of April 7, apparently through the influence of the women's vote, sixteen counties went dry in Illinois, eleven of the larger cities being included in the territory. The entire state of Tennessee went dry on March 1 when the **prohibition** law became effective. On March 17 the Kentucky Senate rejected a measure, previously passed by the lower house, submitting to the people a referendum on state-wide prohibition.—The supreme court of **California** decided on December 20 that the state had no right and had never possessed the right to part with title to its submerged and tide lands. This decision restores to the state, lands claimed by certain railroad corporations.—A **Florida** law of November forbids white teachers to teach in negro schools and negro teachers to teach in white schools, imposing a maximum penalty of $500 or six months' imprisonment.—The supreme court of **Illinois** adjourned on April 23 without rendering a decision with respect to the constitutionality of the woman suffrage law on which depends the legality of the November elections.—The United States Supreme Court, on April 20, upheld a **Kansas** statute authorizing the state superintendent of insurance to lower unduly high rates and to raise rates too low for the safety of stockholders.—In November the United States Supreme Court upheld a **Massachusetts** statute which taxes foreign corporations for the privilege of doing business in the state. The court pointed out that the statute in question affected corporations whose business was only incidentally connected with interstate commerce.—The **New York** legislature met in special session on December 8 and passed bills providing for a state-wide direct primary, the use of the Massachusetts ballot, compulsory workmen's compensation and a special election to determine whether a convention should be called to revise the constitution. In that election, held on April 7, the calling of a convention was authorized by a majority of about 1000, the vote being very light. Following the charges of corruption made in the New York municipal campaign (see last RECORD, p. 722) indictments and convictions were secured in various parts of the state for fraud in the building of the highways. In December a Tammany leader was sentenced to ten months' imprisonment and a fine of $500; the treasurer of the Democratic state committee pleaded guilty to an indictment charging the unlawful acceptance of campaign contributions from corporations; in February the treasurer of the state, after examination before the grand jury, committed suicide; in April the state engineer and surveyor who declined to waive immunity when asked to give testimony before the grand jury was pronounced by that body unfit for the holding of

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public office; six persons, including two former employees of the state, were sentenced to eight months' imprisonment for conspiracy to defraud the state in building highways on Long Island. For the exposure of this widespread corruption District Attorney Whitman of New York county was largely responsible. When the Republican assembly formed a committee to investigate the state departments, the Democratic senate refused to make any appropriation for necessary expenses.

MUNICIPAL AFFAIRS.—On December 6 a power plant on the Tennessee River was opened at Chattanooga capable of providing the city with 200,000 horse power.—The prosecution of election frauds in **Chicago** has resulted in two convictions; and the trial of seven other persons has begun. Fifteen times the county board refused to make any appropriations to assist the prosecution. In the municipal elections of April 7 it was estimated that 150,000 women voted, but not one of the nine women who ran for the council was elected. The Democrats won a decisive victory. The comprehensive plan for the building of subways was defeated.—On January 2 the town of Copperfield, Oregon, was placed under martial law by order of the governor, following a demand for the resignation of members of the council for violation of an ordinance regulating saloons.—Mrs. K. W. Ray, a suffrage leader, was appointed to the presidency of the board of safety of Gary, Indiana, on December 16.—On April 6, in the first non-partisan election in Grand Rapids, the former mayor was reëlected.—The Socialists were again beaten by a union of Democrats and Republicans in the **Milwaukee** election of April 7. Dr. G. A. Bading was reëlected mayor by a majority of 9000 over Emil Seidel, carrying with him the rest of the bipartisan slate. The Socialists now hold only 6 of the 37 seats.—On February 24 the **New York** court of appeals granted a new trial to Charles Becker who had been condemned to death for instigating the murder of a gambler (see RECORD of June, 1913, p. 364); but the court affirmed the verdict of murder in the first degree found against the four gunmen who had actually committed the murder. In February William Willett and Joseph Cassidy were sentenced to a year's imprisonment and a fine of $1000, the former for having bought, the latter for having sold a judicial nomination in 1911 (see RECORD of June, 1912, p. 361). An attempt was made upon the life of Mayor Mitchel of New York on April 17; the bullet, going wild, wounded Frank L. Polk, the corporation counsel, who was driving with the mayor. The assassin was found to be mentally unbalanced and obsessed with fancied grievances.—The voters of **Omaha** rejected a proposed new charter on March 10 and at the same time carried an ordinance compelling the street railway to sell seven tickets for twenty-five cents. Hiram C. Gill, once recalled as mayor of **Seattle**, was elected mayor again in a non-partisan election on March 3.—On December 6 a mass-meeting of 3000 citizens protested against the brutal treatment of prisoners by the police of St. Paul and demanded the removal of the chief. The chief and three detectives were removed a few days later.—The recall of Mayor Konkel of

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Superior, charged with laxity in the suppression of vice, failed by a narrow margin on April 7.—A. C. Fawcett, twice mayor of **Tacoma** and recalled from that office three years ago, was reëlected on April 22 in a non-partisan election.—Mayor Roberts of Terre Haute and five of his associates were indicted in April on a charge of conspiring to procure illegal voting.—On April 4 the Toledo street railway company offered five tickets for fifteen cents in the event of a renewal of its charter.

THE TRUST PROBLEM AND THE RAILROADS.—Late in November the Interstate Commerce Commission began hearings with respect to the petition of eastern **railroads** for a five per-cent increase in freight rates (see last RECORD, p. 723). Evidence was offered to show that the net income of these roads in 1913 was $16,000,000 less than in 1910; and the president of one railroad asserted that the question lay between higher rates and government ownership.— In February farmers and grain dealers in Illinois urged the state utilities commission to disallow advanced rates on grain, pending the physical valuation of railroads.—In February the Missouri railroads took an appeal from the order of the federal district court dissolving an injunction to restrain the state attorney-general who had brought suit to secure the return of excess fares collected by the railroads. —The Pullman company announced in February a new tariff applying to compartments and drawing-rooms, the increase being 50 per cent in the former and 100 per cent in the latter case.—On March 6 the Interstate Commerce Commission charged the Chicago, Milwaukee and St. Paul Railroad with an over-statement of income and other irregularities.—In a number of cases the department of justice secured the voluntary dissolution of corporations which had been threatened with suit under the **Sherman act.** In December the American Telephone and Telegraph Company agreed to dispose of its holdings in Western Union stock (see last RECORD, p. 725); in January, the New York, New Haven and Hartford Railroad relinquished control of the Boston and Maine, various electric railways and most of its steamship lines.—On November 29 suit was brought for the dissolution of the American Can Company; according to the complaint the company had arbitrarily fixed prices, contracted with consumers to buy from them exclusively and exacted from absorbed concerns an agreement not to re-enter the field.—Having already brought about the dissolution of the Union Pacific and Southern Pacific merger (see last RECORD, p. 724), the government entered suit at Salt Lake City on February 11 to compel the latter road to surrender control of the Central Pacific line from Ogden to San Francisco.—On March 18 the government brought suit against the Lehigh Valley Railroad charging a monopoly in the production of anthracite coal through subsidiary companies.—The supreme court of Massachusetts decided on January 6 that the state public service commission had exceeded its powers in permitting the New York, New Haven and Hartford Railroad to issue $67,700,000 of convertible debenture bonds, and therefore annulled the order.— The United States Express Company announced on March 13

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that it would wind up its affairs after an existence of sixty years, this course being rendered imperative by the competition of the post office department and the reduction of express rates by the Interstate Commerce Commission. Other express companies, in their annual statements, showed a marked decrease of earnings.

LABOR AND CAPITAL.—The strike of 12,000 miners in the southern coal fields of **Colorado** (see last RECORD, p. 725) continued through the winter months in spite of persistent efforts on the part of Governor Ammons and the federal Department of Labor to procure a settlement. Recognition of the union was apparently the chief question at issue. On this point both sides were equally determined. In December the federal grand jury at Pueblo indicted the president and twenty other officials of the United Mine Workers of America on the charge of obtaining a monopoly of labor and restraining trade by means of a strike. In the middle of April, when comparative order seemed to have been restored, Governor Ammons withdrew most of the militia. Soon afterwards a sanguinary encounter between miners and militia occurred in the Ludlow district resulting in at least thirty-three deaths. There were smaller engagements elsewhere; and in attacks upon the mines much property was destroyed. On April 22 the entire national guard was mobilized. But as this still further inflamed the strikers and enlarged the area of conflict to include other parts of the state, Governor Ammons found himself unable to cope with the situation and therefore requested federal assistance. The troops arrived on the last day of April.—The strike of **copper miners** in Michigan (see last RECORD, p. 726) was also marked by bitter feeling and bloodshed. Early in December 141 miners were adjudged guilty of contempt of court for disobedience to an injunction against picketing and parading; and though Judge O'Brien dissolved the injunction a few days later, the state supreme court ordered him to vacate his order of dissolution. On December 7, several strike-breakers were killed. Charles H. Moyer, president of the Western Federation of Miners, was assaulted by a mob, wounded, and deported from Hancock on December 26. A grand jury, instructed to investigate this incident, took no action with regard to it, but proceeded to indict Moyer and thirty-eight union officials for conspiracy to prevent non-union men from working. Apparently seven of the jurors were employees of the mines. Settlement of the strike through the good offices of the federal Department of Labor failed in January largely because the operators would not agree to employ the strikers again as union men; and in the subsequent report of the department much blame was placed upon the operators both for the lawlessness which had prevailed and for the failure of the negotiations.—On March 24 the United Mine Workers of America finally refused to accept the terms offered by the owners of bituminous mines in Western Pennsylvania, Ohio, Indiana and Illinois for a new wage agreement, and at the close of April there seemed to be serious danger of a strike.—Rioting occurred near Midland, Arkansas, on April 6, when the coal mines

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began operating under the open-shop policy.—The congressional committee which investigated the strike of coal miners in West Virginia (see last RECORD, p. 725) reported on January 4 that the frequent resort to courts martial had not been justified. In April a new strike began in the Cabin Creek district.—On November 28 Mayor Shank of Indianapolis resigned in face of criticism levelled against his conduct during the street railway strike (see last RECORD, p. 726). Two days later there began a strike of teamsters and commercial chauffeurs which ended shortly with the concession of most of their demands.—On November 11 the arbitration board granted trainmen and conductors on the eastern **railroads** (see last RECORD, p. 725) a wage increase of seven per cent. This award, though much below the demands which had been made, was based upon the increased cost of living since 1910.—On November 13, demanding the adjustment of numerous grievances, 2500 employees of the Southern Pacific railroad lines between El Paso and New Orleans went on strike and completely interrupted freight traffic for four days. Through the efforts of the federal Board of Mediation and Conciliation the company agreed to meet a committee of the unions involved. The men then returned to work.—On January 18, following the discharge of a fireman and engineer for carelessness, 5000 employees of the Delaware and Hudson Railroad went on strike. Appeal being made to the federal Board of Mediation and Conciliation, a settlement was reached within sixteen hours through the reinstatement of the two men.—On February 19 a board of arbitration awarded the trainmen of the Chicago, Burlington and Quincy road small increases in wages aggregating $100,000 a year. A minimum wage was established for passenger trainmen.—On November 25, following the dismissal of two employees who were union leaders, 14,000 workers in the plant of the General Electric Company at Schenectady struck. An agreement was reached four days later under which the two employees were reinstated.—Dr. C. H. Parker, investigator for the federal Commission on Industrial Relations, disclosed in his report of February 13 appalling conditions in the **hop fields** of California where fatal riots had occurred some months before (see last RECORD, p. 726). He found the living conditions "unbearable."—The supreme court of New Jersey, on November 10, set aside the conviction of Haywood, Tresca, and Lessig, leaders of the Industrial Workers of the World in the Paterson strike (see last RECORD, p. 726) who had been sentenced to six months in jail as disorderly persons.—On December 18 the United States circuit court of appeals at New York affirmed the verdict of the lower court awarding $240,000 to Loewe and Company who had claimed damages under the Sherman act (see RECORD of December, 1912, p. 748). This famous **Danbury Hatters case**, which has been in the federal courts since 1903, grew out of a boycott established by the hatters union. The American Federation of Labor will carry the case to the Supreme Court.—In the first case of its kind in the United States the constitutionality of minimum wage legislation was upheld by the Oregon cir-

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cuit court in November. The law in question was one creating an industrial welfare commission with power to regulate wages and hours of labor for women.—The United States circuit court of appeals, on January 6, affirmed the sentences of twenty-four officials of the International Association of Structural Iron Workers, convicted of conspiracy to transport **dynamite** for illegal purposes (see RECORD of June, 1913, p. 368). Seven were granted new trials. On March 9 the Supreme Court affirmed the decision.—On March 24 a professional strike-breaker, on pleading guilty at Seattle to a charge of conspiracy, confessed that he had planted dynamite in order to incriminate leaders of the teamsters union, then on strike.—In various parts of the country the problem of unemployment was forced on the attention of state and local authorities during the winter and spring months. Labor commissioners of six states, meeting in Chicago, suggested that the federal government provide for the proper distribution of workers. In February the federal Commission on Industrial Relations announced the commencement of an elaborate investigation into the causes of unemployment. In both San Francisco and Los Angeles the city government provided work for thousands. Violence occurred in several places: in Sacramento where an "army" of unemployed were driven from the city, and in New York where the police checked several disturbances and secured the conviction of a number of agitators.

THE RACE PROBLEM AND LYNCHING.—In December three negroes charged with the murder of a white man were secretly brought from Waynesboro to Augusta, Georgia, and so saved from lynching. Another lynching was averted at Chesterton, Maryland, where the sheriff defended the county jail against a large and determined mob until the police arrived from Baltimore.—At Leland, Mississippi, in February, a negro who had killed a deputy sheriff while resisting arrest was bound and set on fire by a mob of three hundred persons. Breaking from his bonds and attempting to escape, he was shot and afterwards burned.—At Wagoner, Oklahoma, in March, a negress who had killed a young white man as he was leaving a resort in the negro quarter was taken from the jail and hanged by masked men.—While attempting to arrest negroes in a village near De Sota, Georgia, on February 8, one constable was killed, two severely wounded; and one negro was killed.—Two negroes who had confessed to the murder of a white man were shot by a mob at Blanchard, Louisiana, on December 16.—At Williston, North Dakota, a man who had been sentenced to life imprisonment for murder, was taken from the jail on December 16 and hanged. In resisting the mob a policeman and a citizen were seriously injured.

THE DEPENDENCIES.—On November 24 President Wilson nominated as American members of the Philippine commission, in addition to the governor-general, H. S. Martin of Kansas, Clinton L. Riggs of Maryland and Winifred T. Denison of New York. Control henceforth lies with the five native members of the board, as foreshadowed in early statements of

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the president's policy.—On November 27 Dean C. Worcester, formerly secretary of the interior and member of the commission, severely criticized the policy of the administration, condemning particularly the rapid replacement of American officials by Filipinos of little knowledge and no experience. Very much the same ground was taken by ex-President Taft in a public address several days later.—Resolutions asking for independence under the protection of the United States were adopted by the Progressive party at Manila on February 13; a resolution of the same effect was adopted by the Philippine Assembly on March 1.—The foreign trade of the Philippines for the past fiscal year reached $110,000,000, an increase of some $5,000,000 over the previous year. Over forty-five per cent of the import trade and over thirty-seven per cent of the export trade was with the United States.—Arthur Yager was inaugurated as governor of Porto Rico on November 20.—Under the provision of a bill now before Congress a larger responsibility for local administration would be conceded to Porto Ricans, and also American citizenship.—The secretary of war, in his annual report, urged the granting of citizenship on individual application. He deprecated the demand for independence, believing that "it is idle to consider or discuss any future for the people of Porto Rico as separated from the United States."—The foreign trade of Porto Rico for the past fiscal year amounted to $86,000,000, of which eighty-six per cent was with the United States.

III. LATIN AMERICA

MEXICO.—As had been expected, the new Chamber of Deputies, elected in October (see last RECORD, p. 729), upon its first session in December, declared the **presidential election** invalid because of the insufficient number of votes cast, and authorized General Huerta to continue as provisional president until the next elections in July.—Meanwhile, the **Constitutionalists** in the northern states, under the command of Pancho Villa, acting ostensibly as a subordinate of General Carranza (see RECORD for March, 1913, p. 371), continued to gain possession of the important railway and strategic centers between the northeastern border and the capital. Their loss of Torreon early in November was soon retrieved by their capture, in November–January, of Culiacan, Tuxpan, with its valuable oil tanks, Juarez and Ojinaga. The invitation by Villa to all bandits to join his forces brought him valuable accessions, while the removal by President Wilson, on February 3 of the embargo on the importation of arms from the United States, was also of great service. On March 31, after a week of bloody fighting, Villa recaptured Torreon, where he rested while preparing for further advance. The financial means for these operations were obtained chiefly by methods of confiscation and ransom drastically applied to the wealthy.—A renewal of hostilities to the south of the capital by the Zapatists, a revolt of the Serrano Indians, and mutinous outbreaks among Huerta's own garrisons combined to make still more difficult his work of pacification.—Most serious of all, however, were the **financial difficulties**,

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in which Huerta found himself. On November 5, he issued a decree making bank paper legal tender. This step, combined with the disastrous effects of the policy of financial boycott, now tacitly assumed by the powers upon the request of the United States, so weakened commercial and financial confidence that Huerta was obliged to order a bank holiday of ten days. A heavy increase in the rates of stamp duties brought little relief, and the suspension of payment of the soldiers was followed, on January 12, by a failure to pay the interest on the national debt, and a few days later, by a refusal even to cash money orders. The occupation on April 21 by an American force of the custom-house at Vera Cruz, the chief Atlantic seaport (see p. 353 *supra*), cut off an important portion of Huerta's revenues, though not so large a portion as had been hoped by the Washington administration, since sixty per cent of all future customs receipts at Vera Cruz had already been hypothecated by Huerta to pay interest on loans.

CARRIBEAN AND CENTRAL AMERICAN STATES.—At the January elections in **Colombia**, the Liberal party withdrew its candidate for the presidency, thus permitting the unopposed election of Dr. Josè Concha.—In **Costa Rica**, at the presidential election of December, no candidate received a sufficient number of votes to secure election.—The disturbances anticipated for the opening of the Congress of **Cuba** on November 3 (see last RECORD, p. 730) were averted by the decision of the Liberal minority to attend the sessions; but the administration was called upon to suppress an uprising in the province of Santa Clara, said to have been fomented by the Cuban Ports Company, after the courts had sustained the cancellation of its ports concession previously granted. The administration's plan for a $10,000,000 loan was enacted, and the loan was floated through J. P. Morgan and Company. A modification if not a suppression of the government lottery, in connection with which enormous frauds had recently been exposed, was urged by President Menocal in a message to Congress.—In an election held on December 15 under the "observation" of American representatives (see *supra*, p. 354), the tangled question of the presidency of **San Domingo** was settled by the choice of the provisional president, Josè Bordas Valdez.—In the same month an insurrection broke out in **Haiti**, under the leadership of Senator Davilemar Theodore. For a few weeks the rebels were everywhere successful, occupying Trou, Cape Haytien, and Gonaivies, and menacing Port-au-Prince, the capital, so that President Orestes fled the country. With the arrival of American and German bluejackets at Port-au-Prince, however, the government forces under General Zamor soon reoccupied most of the territory captured by the rebels. On February 3, Zamor proclaimed himself president and on March 1 was recognized by the United States.—The alleged discovery in **Nicaragua** of a revolutionary plot resulted in the imprisonment of a number of prominent Liberals. In spite of the American loan negotiated by the government (see last RECORD, p. 714) it was unable to meet the demand of the foreign ministers on January 16 for the payment of $1,000,000 due to foreigners.

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—In **Panama** the refusal of the Chinese to comply with the registration and poll-tax laws, even in their amended form, threatened serious disturbance, but eventually compliance was made.

SOUTH AMERICA.—In **Brazil**, a few days before the federal election of March 17, an uprising in which the prime movers were apparently army officers, threatened the government's authority in the entire state of Ceara, on the northern seacoast, and found support even in the vicinity of the capital. Martial law was immediately extended over the whole seacoast north of the capital, the publication of opposition newspapers was suppressed, and the elections were successfully conducted, W. P. B. Gomez being elected president over the administration candidate.—President Plaza of **Ecuador** had hardly completed the arrangements for a $33,000,000 foreign loan, to be used in the cleaning of Guayaquil (see *supra*, p. 354), and in the construction of railroads, before he was compelled to take the field against rebels who had captured Esmeraldas. He re-took the town, and suppressed the outbreak.—In **Peru** also, foreign financial relation were an incident to, if not the cause of, a revolt against the government. President Billinghurst, who had insisted upon a foreign loan, but who was averse to concessions to certain American capitalists, was captured, deposed and exiled by a military force under Colonel Benavides, who set up a provisional executive government, which, to the general surprise, received almost immediately the recognition of the United States. The Congress, which was controlled by the revolutionaries, ordered an election for May.

IV. THE BRITISH EMPIRE

IMPERIAL RELATIONS.—The question of the propriety of **imperial interposition** in domestic concerns of the colonies to protect personal rights was forcefully presented by the action of the South African government in illegally expelling from the country the leaders of a strike (see p. 376, *infra*) and also by the policy of that government, as well as that of the Canadian government, toward Hindus (see pp. 375 and 373 *infra*). In neither case, however, did the imperial government intervene, though urged to do so in the first case by the Labor party and in the second by Lord Hardinge, Viceroy of India. Its inaction on the Hindu question was, however, undoubtedly the only course open to it, General Botha, Premier of South Africa, having emphatically asserted the full rights of the South African government in the matter, and a conference of Canadian premiers having voted down a proposal for a Dominions Conference on the Asiatic immigration question.—The growing importance of the **imperial judicial control** was emphasized by the reference of several important cases from the colonies to the judicial committee of the Privy Council (see pp. 373, 374, *infra*), and by a speech by Lord Chancellor Haldane on the possibility of a still further extension of the imperial judicial functions of that body, in which he suggested that it might be organized into several divisions, some of which might sit, when occasion required, in the Dominions.—At the same time

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Postmaster-General Samuel predicted the coming of **colonial representation** in the imperial government, urging that a system under which the Dominions had no voice in the selection of the body which determined all imperial policies could not possibly remain the final form of the empire.—In a speech introducing the Navy Estimate, the First Lord of the Admiralty, Mr. Churchill, on March 18, again urged the advantages for **imperial defense** on the naval side of a policy of direct contribution, rather than cooperation (see last RECORD, p. 731). His intimation that the Anglo-Japanese entente constituted so good a guarantee of safety to the Pacific dominions as to make unnecessary their provision of ships in Pacific waters was taken by the prime ministers of both Australia and New Zealand as evidence of a lack of sufficient consideration for the interests of those Dominions, and served only to confirm them in their belief in coöperation rather than contribution as the best plan for naval defense. Nor was the expected contribution from Canada yet forthcoming. The enactment by Canada of an act prohibiting the export of oil in time of "emergency" was indeed the only tangible result achieved by the British Admiralty in the field of imperial defense.—Improvement of **imperial trade relations** was hoped for from the work of the Dominions' Royal Commission, which began an inquiry into the resources and trade relations of all the Dominions, and from a movement inaugurated in March by the British Empire League to establish a mark of origin for all goods made anywhere in the Empire. Almost simultaneously, however, the South African government announced that it had placed a large order for rolling stock for its railways with a German concern, which had greatly underbid the English concerns to which the government had formerly awarded its contracts.

THE UNITED KINGDOM.—During the few months preceding the opening of the new session, in which the government's bill making provision for **Irish Home Rule**, was due to be introduced for the third time (see last RECORD, p. 732) discussion of the question gave at first little hope for a peaceful solution. Conversations between Mr. Asquith and the Unionist leader, Mr. Bonar Law, entered into in December at the suggestion of the prime minister with the object of arriving at some basis of compromise, were terminated without any progress having been made. Meanwhile, Mr. Redmond, on behalf of the Irish Nationalists, repeatedly announced that his party would assent to no compromise. Upon the reopening of Parliament on February 10 for the new session, the government announced its adherence to the plan of passing the Irish Government Bill for the third time during that session, without submitting it to the test of either a referendum or a general election. The growing intensity of feeling revived a wide-spread opinion that a final attempt at compromise should be made. On March 9 Mr. Asquith presented proposals, not embodied in legislative form, for the exclusion of those counties of Ulster which should by a referendum so determine, from the operation of the act for six years, after which time they should automatically come under

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the act. This proposition, however, was not accepted by the Unionist or Ulster leaders, who saw in it the immediate loss of five of the nine Ulster counties in which the Catholics predominate, and the loss of the remaining four at the end of six years; nor did it please the more extreme Nationalists, to whom any division of the island seemed a blow at the ideal behind the Home Rule movement. The opposition of the Ulsterites was, however, somewhat mollified by the repeated suggestions unofficially made by influential Liberals, and particularly by Sir Edward Grey, that before the end of the six-year period some scheme of **federal government** for the whole kingdom might be devised under which Ulster might secure permanent local autonomy. These suggestions continued to increase in frequency and in the favor with which they were discussed by influential members of both parties, including Mr. Asquith; but April passed without the advance of any definite proposition of federalism by either the government or the Unionist leaders. The tendency of the government to recede from its original position as embodied in the bill (which it introduced, in its original form, on March 5) was doubtless due in large measure to the increasing indications of the serious consequences which might ensue should the passage of the bill result, as was threatened, in the establishment of a provisional government in Ulster (see last RECORD, p. 734). The **Ulster volunteers** continued to add to their numbers and equipment; a movement to enroll auxiliary volunteers in Great Britain itself received immediate and extensive support, as did also a fund in Great Britain for the assistance of the Ulster military organization. With these wholly illegal proceedings, the government seemed afraid to interfere, making no attempt to enforce the Crimes Act, under which all the stores of arms and ammunition belonging to the "Volunteers" could be confiscated, but contenting itself with the prohibition on December 4 of the further **import of arms** and ammunition into Ireland by either foreign or coastwise vessels. On March 14 the Army Council, in pursuance of a policy decided upon by the cabinet, instructed Sir Arthur Paget, in command of the royal forces in Ireland, to "take special precautions for safeguarding depots and other places where arms or stores are kept." Pursuant to these instructions, Sir Arthur heavily **re-enforced the garrisons** and guards at several points in Ulster with troops from the southern garrisons and gave orders for a rigid control of all access to barracks and store-houses. Simultaneously, two scout cruisers were ordered to Belfast. The conviction of a number of the officers in the Irish forces that an offensive campaign against the Ulster Volunteers was in contemplation was not removed by the government's public statement that the movements ordered were purely precautionary. Sir Arthur, acting apparently under instructions, inquired of the officers still at Dublin whether they would obey if ordered north; to which almost all the officers of his cavalry brigade, headed by General Gough, responded by offering their resignations. Thus was brought to a head the question which had colored all discussion for several months past, the **attitude of the**

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army, and particularly of the higher officers, predominantly Unionist and Protestant, toward a policy of military coercion. This question had been raised a few weeks previously by a public speech in which Sir Arthur himself had told how reluctant he would be to move his men against Ulster, should he be ordered to do so, and by the signing by Lord Roberts, the senior field marshal of the army, and by Admiral Sir Edward Seymour, of a public address declaring Ulster justified, and deserving of encouragement, in her contemplated resistance to coercive measures. General Gough, the commander of the refractory brigade, was summoned to London and offered assurance by the cabinet that the questions put by Sir Arthur had reference only to "commands given either for the protection of public property and the support of the civil power or for the protection of the lives and property of the inhabitants." This assurance not being deemed sufficiently definite by General Gough, Colonel Seeley who held the war portfolio, and his two chief military aids thought proper, without consulting any member of the cabinet, to add in writing that the government had "no intention whatever of taking advantage of this right [to maintain order and support the civil power in the ordinary execution of its duty] to crush political opposition to the policy of principles of the Home Rule Bill." The publication of this remarkable assurance threw the ministry into confusion for the moment. The situation was met by Mr. Asquith's prompt and unqualified repudiation of the assurance as unauthorized, by the promulgation of an army order prohibiting the setting of any question to or by any member of the army as to future or hypothetical orders or his conduct with reference to them, and by the acceptance, after a brief delay, of the resignations of Colonel Seeley and his two chief military advisers, and the assumption by Mr. Asquith himself of the war portfolio.—The unopposed return of Mr. Asquith to Parliament by his constituency in the election to which he was required to submit upon his acceptance of the war secretaryship was urged by the Liberals as an indication that the government still retained unimpaired the confidence of the majorities which had retained it in 1910, and that a referendum or a general election was unnecessary. The evidence of other **by-elections**, however, hardly bore out this contention. An election in southern Scotland, though the Liberal candidate was returned, gave unmistakable indications that the Home Rule policy of the government had caused serious defection among the Scotch Protestants; while the return of Unionist candidates by four unrelated constituencies, formerly Liberal, in each case apparently because of the entry of a Labor candidate, made plain that in the event of a general election the **Labor Party** might well effect the return of a Unionist majority. This possibility had already been indicated by the borough council elections of November, in which the Labor and Socialist parties had made heavy gains at the expense chiefly of the Liberals, and was enforced in January by the excellent showing made by the Labor candidates in the municipal elections at Dublin, simultaneously with the collapse of

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the general strike there. So serious was the situation that Mr. Asquith in March made an appeal to the Labor forces for coöperation, on the ground of their substantial identity of purpose with the Liberals. But this suggestion seemed to receive little consideration from the Labor leaders.—The failure of the government to act against the illegal preparations in Ulster, while dealing harshly with **militant suffragists,** furnished the latter with a new ground for accusing the government of cowardice and unfairness, and gave rise to a proposal for the formation of a suffrage volunteer army, similar to that in Ulster, a proposal which did not, however, materialize. Equally empty, apparently, was Miss Pankhurst's threat in London of a city-wide rent strike. The campaign of arson and personal violence continued, but without effecting any apparent parliamentary advantage.—**Industrial disputes** continued to figure prominently in the political situation. In Dublin, the **Transport Workers' Strike** of August (see last RECORD, p. 734) developed into a general strike. Violent conflicts between strikers and police ensued, and on October 27, James Larkin, of the Transport Workers, the leader of the strike movement, was sentenced to seven months' imprisonment for sedition and riot. Following a protest strike of the dockers on November 2, however, the government ordered his release, being influenced also, doubtless, by the threats made by Mr. Larkin's colleagues to make his imprisonment an issue in every by-election, of which several were then pending. The strike situation evinced no improvement, however, nor did the efforts at mediation made by a committee of the Trade Union Congress in December meet with success, Mr. Larkin insisting upon the re-instatement of all strikers, and antagonizing his English colleagues by his seeming lack of moderation. Thus the strike dragged on till the middle of February, when it slowly collapsed, one group of workers after another applying for re-instatement, in most cases without obtaining any concessions from their employers.—A continued agitation among **postal employees** for a fifteen per cent increase of wages resulted in inconsiderable concessions by the government. A strike at Leeds of employees of the **municipal services** (including tramways and light) for a wage increase resulted in complete defeat. In Herefordshire, the **school teachers** struck for an increase in pay, and were successful. In the Yorkshire **collieries** a dispute over the interpretation of an award made under the Minimum Wage Act of 1912 resulted in a strike of over 50,000 men. After two weeks the strike was settled by a Conciliation Board. Strikes without political significance were also numerous, their chief aim being the establishment of the closed shop.—Surprise was caused by the action of the Amalgamated Society of Engineers in reversing, by a second referendum, their decision of a few months previous, to impose a small levy upon each member for political purposes.—The **land and housing proposals** set forth by Mr. Lloyd-George in October (see last RECORD, p. 733) were repeated by him and Mr. Asquith. An investigation was ordered by the Local Government Board to consider the advisability of government credit

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for non-commercial housing enterprises, and another by the Board of Trade upon the problem of urban transit conditions; but no legislation was formulated. Offers by the Duke of Sutherland and other nobles, to sell to the government at a nominal figure lands held by them out of use, which Mr. Lloyd George had alleged to be valuable, were refused by the government. A Unionist bill, proposing an annual grant of £1,000,000 in aid of local housing schemes was, however, disapproved by the government, which proposed rather to improve housing conditions by effecting an increase in wages and a lowering of rates on housing properties.—Charges that the estimates made by the government prior to the enactment of the **insurance act** had been so grossly discredited by the first year's experience under the act as to threaten many of the friendly societies with bankruptcy, were repeatedly made by members of the opposition, but without evoking any complete statement from the government.—The passage by the Lords, with the complete acquiescence of the government, of a resolution that "a **contribution to party funds** should not be a consideration to a minister when he recommends any name for an honor to His Majesty" seemed to indicate a general agreement that the practice condemned had been greatly abused, and would be discontinued.

CANADA AND NEWFOUNDLAND.—The question of Asiatic and especially **Hindu immigration** in the Pacific provinces, and particularly in British Columbia, assumed pressing importance because of a decision of the chief justice of British Columbia declaring void all orders prohibiting the entry of Hindus into that state. The government on December 9 therefore prohibited the entry of all artisans and laborers into British Columbia until March 31. On March 3 the British Columbia Commission on Labor Conditions recommended as a permanent policy the total exclusion of Asiatics from the province.—**Anti-Chinese and Japanese feeling** was also seen in the measure passed by Saskatchewan prohibiting orientals from employing white girls in factories or mercantile establishments, and by the announced intention of the Ontario government to enact a similar measure should the Saskatchewan act be sustained on the question of constitutionality, by the Imperial Privy Council.—The chief items in the legislative program of the government for the session of the **Dominion Parliament** which opened on January 15 were a bill for the redistribution of representation on the basis of the last census, so as to increase the western representation, and the re-introduction of the **Naval Aid Bill.** The government later decided, however, not to introduce the latter measure, as it was seen that it could not pass the Senate.—The exposure of **corruption** on the part of three Liberal members of the Quebec legislature was followed by a report of the National Transcontinental Railway Commission that $40,000,000 had been wasted in the construction of the Grand Trunk Pacific Railroad, and that a not inconsiderable portion of this amount had gone to politicians. —The application on March 23 of the Canadian Northern Railroad for further bond guarantees by the government was welcomed by Mr. Borden,

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the premier, as affording an opportunity for compelling the assent of the road to fuller control by the government. — A fortnight later the Canadian Railway Commission, after an agitation and investigation extending over ten years, ordered **reductions in freight rates** of from five to thirty per cent on almost all the local and inter-provincial business of the Canadian Pacific Railroad.—On February 2 the **parcel post** system was inaugurated. —The last link between the eastern and western divisions of the Grand Trunk Pacific Railroad was completed on April 7, thus forming a second Canadian coast-to-coast railroad. — In the **Newfoundland** elections in November, the government was returned by a very slight majority, in spite of a fusion of the Bond party with the Fishermen's Union. Shortly afterward Sir A. Bond announced his retirement as leader of the opposition.

AUSTRALIA.—A report in January of the Dominions Royal Commission (see *supra*, p. 369) in favor of **deepening the chief ports** of the Commonwealth, to keep pace with the recent deepening of the Suez Canal, was favorably commented on.—On April 8 it was announced that the federal and state governments had concluded an agreement for the construction, at a cost of £4,500,000, of **drainage works** on the Murray River (which forms the boundary between New South Wales and Victoria), involving also the creation of a new port. The project was regarded as of the highest importance also as marking a step forward in **interstate coöperation**. —The deadlock in the **Commonwealth Parliament**, caused by the presence of a Liberal majority in the House and a Laborite majority in the Senate (see last RECORD, p. 736) continued. The rejection by the Senate in December of several important bills passed by the House, particularly the Postal Voting Bill, was believed to foreshadow a **dissolution** after three months, if the Senate should then again reject these bills.—In January the Judicial Committee of the Privy Council decided in favor of Victoria her **boundary dispute** with South Australia.—An important interpretation of the constitution with respect to the **powers of the federal government** was rendered by the Privy Council in sustaining the decision of the High Court of Australia that a mandatory inquisition into the sugar-refining business, which lay outside the sphere of federal legislation, could not be justified by the possibility that the results of the investigation might indicate the desirability of amending the constitution so as to extend federal control over the subject investigated.—At the elections in December in **New South Wales** the Labor party was retained in power. A few changes in the personnel of the ministry were made.—Shortly afterward the government announced the purchase of a large bakery in Sydney, for the purpose of supplying government institutions.

NEW ZEALAND.—A **dockers' strike** late in October tied up the only two important ports of the Commonwealth, Wellington and Auckland. The strikers were quickly replaced, however, to a large extent by farm laborers sent by their employers. Some violence ensued when the strike-breakers attempted to enter the wharves, but it was controlled by the

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police. An attempted general strike in Auckland collapsed, and by the end of the month the entire strike had failed. The failure of the Waterside Workers' Union, which had persistently refused to register under the Compulsory Arbitration Act, to secure its demands was regarded as a victory for the principle of that act.—The **Naval Defence** Act, passed in December, ordered that the annual subsidy of £100,000 which it had hitherto been the policy of the government to place at the disposal of the British Admiralty, should be expended by New Zealand government itself in the training of seamen for service in British waters and in expediting the construction of a fast cruiser for the protection of harbors and trade routes.

SOUTH AFRICA.—At a congress of the South African **Nationalist Party** in November, the followers of General Herzog, failing in their attempt to wrest control of the congress from General Botha, seceded from the party and arranged for the formation of a new party, in which, presumably, the special claims of racial interests will receive major emphasis. The government still retained its parliamentary majority.—Among the **Hindus in Natal** resentment grew against the alleged discriminations against them, consisting of restrictions upon their rights of residence and occupation, denial of citizenship, refusal of the government to recognize their polygamic marriages, and above all, a special head-tax of £3. In November this agitation took the form of an organized protest march into the Transvaal. The conviction of their leader, Mr. Ghandi, on charges of aiding prohibited immigrants to enter the Transvaal and of inducing indentured Hindus to leave Natal in violation of their indentures failed in its purpose of intimidating the demonstrants. Thereupon four hundred of them were arrested for violation of their indentures, returned to the mines to which they were indentured and compelled as prisoners to resume work. Though some indignation was aroused among the working people by the news of this new device for strike-breaking, public sentiment seemed to regard the Hindu demands as a preliminary to a demand for suffrage, and as a whole strongly supported the government. The strike soon lost its original solidarity and collapsed. The government, however, appointed a commission of inquiry, in which, in spite of the strong protests of the Hindus, no Hindu was included. The report of the commission, made public on March 17, recommended the abolition of the license fee, the admission of one wife of a Hindu immigrant and the validation of his marriage with that wife, and a removal of all minor administrative discriminations against Hindus. The government did not announce its position with regard to these recommendations.—The announcement on January 5 by the government that wages on the railroads would be reduced, was answered by the leaders of the railway unions with a call for an immediate **railway strike**. Only in the Transvaal, however, did the men answer the call. Violence was resorted to by the strikers to impede the movement of trains; and on January 9 and 10 the government called out the Transvaal militia, consisting chiefly of Boer farmers, to the number, it was said, of 50,000.

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A general strike in the Transvaal and Orange Free State was thereupon declared by the Federation of Trades, to which the government responded by declaring **martial law** over those states and part of Natal. Cowed by the severe repressive measures taken by the government under the cover of martial law, the strikers on January 18–20 returned to work in large numbers; but threats of a new general strike and sporadic disorders continued. On January 27 the government arrested the ten chief officers of the Federation of Trades and without giving them a hearing or permitting them to communicate with counsel or friends, placed them at Durban upon a ship bound for England, which sailed immediately. In spite of the intense indignation excited by this **illegal deportation**, the government a few days later introduced into Parliament a bill indemnifying it for all acts committed under martial law, including the deportation, and declaring the deported men to be permanently undesirable immigrants. Justifying itself on the ground that the deported men were engaged in a conspiracy to starve the country, the government secured the passage of the bill, though without the clause declaring the deportees permanently undesirable. Attempts to induce the Imperial government to veto the act failed (see *supra*, p. 368). —The political consequences of the strike were indicated by the sweeping victories of the **Laborites** in the Transvaal provincial council elections a month later, as well as at a Capetown by-election, in which the first Labor member was returned to the Union Parliament. These manifestations were doubtless instrumental in inducing the government to withdraw from Parliament its Peace Preservation Bill, designed to deal with strike disorders, prohibiting picketing and permitting the deportation of persons convicted of violence.—It was announced in London that the governor-general, Lord Gladstone, had offered his resignation to take effect in June, and that he would be succeeded by Sydney Buxton.—The speeches delivered by Generals Botha, Steyn, de Wet and others at the unveiling, in December, of a statue to the women and children who died in British concentration camps during the Boer War were marked by great restraint and an entire absence of anti-British feeling, as was also the conduct of the great Boer assemblage.

INDIA.—Further outbreaks of hostilities between the **Mohammedans** and Hindus, though minor in character, indicated that the Moslem trouble had not yet by any means been solved by Lord Hardinge's conciliatory policy (see last RECORD, p. 738).—Following evidence revealed in the trial of a case of conspiracy against the government at Calcutta, pointing to the existence of an attempt to organize in Punjab and the United Provinces a campaign of **terrorism** similar to that which was responsible for the Bengal murders (see last RECORD, p. 738), it was publicly declared by the Calcutta chief of police that a criminal conspiracy against the government existed among the educated classes of all India. The government of Punjab, a few days previously, had confiscated a Lahore newspaper, "Zenindar," with its equipment.—In pursuance of the policy laid down in 1912, there were instituted in the Central provinces, under the sanction of

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the Imperial government, native **legislative councils** of twenty-five members.

RHODESIA.—At the election of the non-company members of the legislative council held in March, the chief issue was whether the council should apply to the Imperial government for a repeal of those portions of the **Charter of the British South Africa Company** which gave it governmental powers, and for the erection of Rhodesia as a full crown colony. The feeling that such incorporation would inevitably be followed by the absorption of Rhodesia into the South African Union, where its special needs would not receive recognition, resulted in a sweeping victory for the charter candidates. The intention announced by the company a few months previously, of encouraging more generously settlement upon its lands was also a factor in the result.

V. CONTINENTAL EUROPE

FRANCE.—The action of the Senate in November in amending an act for the **hours of labor** in coal mines by greatly increasing the amount of overtime permitted, provoked a strike of protest in the northern collieres, which was shortly ended by an agreement between the owners and the National Miners' Federation to suppress all long shifts until the enactment of the new law. The leaders of the more radical unions which recently broke away from the Federation did not approve this settlement, but were unable to restrain their men from observing it.—The **budget** for 1914, introduced on November 4, showed a heavy deficit, which, together with the expense of the pacification of Morocco, still unpaid, and the cost of new equipment for the army, a total of $260,000,000, the government proposed to raise by internal loan. This proposition was passed by the Chamber, but the proposal to exempt the loan from taxation was defeated by a majority of twenty-five. Thereupon the Barthou ministry resigned. The question of the loan was regarded as an incident, rather than the cause, of the **ministerial crisis**, inasmuch as for some time there had been in process of formation a coalition of the Radical-Socialists and the Socialists to oust the government, because of objections to its policy of military expansion, of hostility to labor, and of growing friendliness to the Church. Upon the fall of the Barthou ministry, Gaston Doumergue, a Radical-Socialist, succeeded in forming a cabinet and obtaining a working majority of one hundred and fifty-one. The new minister of finance, ex-premier Caillaux, was generally believed to be the dominating force in the new ministry and to be working in close accord with ex-Premier Clemenceau. Influenced, doubtless, by the part played in the fall of the Barthou ministry by the question of the relation between the state and the labor organizations, M. Briand made a speech at St. Etienne which was generally regarded as a call for a **new party** for the April elections. In this speech he declared that the vital issues of the day were nct Republicanism or anti-clericalism, but the proper organization and treatment of the labor resources of the

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country. The new minister of finance proposed to **tax capital**, and, later, colonial and foreign bonds, but not national *rentes*, thus in effect repeating the proposals whose defeat had caused the fall of the Barthou ministry a few weeks before. All of M. Caillaux's proposals were rejected by the Senate, but in the Chamber the government retained a secure majority.—Largely, it was alleged, for personal reasons, M. Calmette, editor of *Figaro*, conducted during January a violent campaign against M. Caillaux in which he charged him, among other things, with having approved the payment by the government of an enormous private claim, on condition that the major part of it should be paid to the treasury of his party, with having profited in private speculations at the expense of the government, and with having used his influence to delay the trial of a swindling financial promoter, Rochette, in 1911, till the latter could make good his escape. The publication of a private letter from Caillaux to a lady, presumably his wife, revealing, it was alleged, gross political duplicity on his part, and the threatened publication of further private letters, impelled Mme. Caillaux to assassinate M. Calmette. The outcry which followed compelled M. Caillaux's resignation, but he later announced his determination to be a candidate at the general election in April.—Discussion in the Chamber of the army estimates pointed to **inefficiency in the army** councils, it being revealed that the French air organization was far weaker than the German, and that the preparations made for the reception in the garrisons of the increased levies of recruits had been so inadequate as to result in contagion and widespread disease.—The revelations of corruption and general inefficiency in public life with which recent political developments had been so largely concerned, were said by observers to have created in the provinces a profound disgust with and **apathy** toward public affairs, to which the suggestive name of *menfichisme* was beginning to be applied.—This view received some confirmation from the **general elections** held on April 26 after the Chamber of Deputies had adjourned for the first time in its history without voting the budget. M. Caillaux was re-elected. Though only 351 out of 602 seats were filled, the result of these elections indicated the return of a large majority for the government coalition and but little change in the complexion of parties as a whole.—After the overwhelming rejection by the Chamber in November of a **woman suffrage** amendment, the suffragists attracted attention by unsuccessful efforts of several women to compel the election officials to receive their registrations for the general elections, the appearance for the first time of a woman-suffrage street parade, and the formation of a new national organization. It was reported that thirty-three municipal councils had resolved in favor of municipal suffrage for women.

GERMANY.—The trial of two officials of the **Krupp** firm (see last RECORD, p. 741) for bribery of army officials, resulted in a verdict of guilty, after evidence that they had been so powerful in the War Office as even to influence appointments to important posts in the armaments division.—A few days later popular feeling against the military was greatly intensified

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by reports of conflicts between citizens and soldiers in the garrison town of **Zabern**, in Alsace-Lorraine, where continued ill-feeling between the military and the Alsatian population had culminated in the sabring, by a Lieutenant von Foerstner, of a defenseless civilian, and the arrest, without warrant, by Colonel von Reuter, commanding the garrison, of several other civilians. Discussion in the Reichstag on the part of members of almost all parties assumed a tone so critical of the government as to indicate that a **crisis** was at hand which could only be met by the resignation of the chancellor, Dr. von Bethman-Holweg. Yet even when the Reichstag, by a vote of 293 to 54, expressed its dissatisfaction with the explanation offered by him, he announced that he did not consider it his duty to resign. The new practice of passing motions after listening to the answers to interpellations did not, he pointedly reminded the Reichstag, change in any way the system of government established by the constitution. In this firm position the Reichstag tacitly acquiesced by refusing by a majority of three to support the Social-Democratic proposals that the Reichstag decline to assent to any supply bills as long as the chancellor remained in office. A few weeks later the government, on the ground that the Reichstag did not possess the power to initiate legislation, refused to submit to the Bundesrath a resolution by the Reichstag calling upon the upper house to define uniformly the conditions of military intervention. On the military side, also, the government took a firm stand. Though the Zabern regiment was transferred to a distant garrison, the military court of Strassburg reversed the conviction which had been entered in the military court of first instance against Lieutenant von Foerstner and acquitted Colonel von Reuter of charges of unwarranted assumption of police functions. Subsequently, also, the Kaiser conferred a minor decoration upon the Colonel and showed him favor in other ways. Thus it ensued that an incident, which had at first threatened to weaken both the government and the prestige of the military, seemed for the time at least rather to have strengthened them.—Not until late in December, when the revised **Sickness Insurance Law** was to go into effect, was a compromise finally effected between the doctors' associations and the insurance authorities (see last RECORD p. 741), whereby an arbitration board was established to decide disputes as to fees payable under the act, and related matters. After a month and a half of the operation of the act, the authorities found it necessary to order the organization of domestic servants in separate societies as a partial remedy for the injustice of the law as applied to that class.—For the first time in its history the Reichstag in January consented to debate upon a petition for **woman suffrage** in elections to the Reichstag and the eligibility of women to public office.—**Prusso-Bavarian** relations evinced signs of strain in the formation of an organization calling itself the Preussenbund, in which Lieutenant-General von Kracht of Prussia was a prime mover. The advocacy of a mobilization of Prussian troops "in defence of Prussia's position in the Empire," resulted in official protests by the Bavarian government.

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AUSTRIA-HUNGARY.—The conviction, on March 7, of several army officers for espionage on behalf of the Russian government was accompanied by revelations from other sources of wide-spread **corruption** in the army.—Disorders between the Germans and the Czechs in the Reichsrath became so serious that the adjournment of that body was ordered.

PORTUGAL.—At the November **elections** the government was returned by a large majority.—Because of the hostility of President Arriaga, who expressed his intention of securing a "non-partisan" ministry, Dr. Costa's ministry gave way in February to that of Dr. Machado, less partisan in character. The revision of the laws governing the relation between church and state, the revision of the electoral laws in the direction of widening the suffrage, and the immediate decision of the fate of **political prisoners**, were the chief items of the legislative program announced. The extension of amnesty to political prisoners was urged upon the government by influential British organizations, but the government insisted, through a law of February 22, on providing for the trial of all prisoners before specially constituted tribunals, which should sentence the guilty to exile for not more than ten years. Eleven of the leading prisoners were almost immediately given the maximum sentence.

ITALY AND THE HOLY SEE.—At the **elections** held in December, the first to be conducted under the new electoral law, greatly extending the suffrage (see last RECORD, p. 744), the government retained its majority, in the face of heavy gains by the **Socialists.** M. Giolitti, the prime minister, obtained in the Chamber a majority of one hundred and eighty, through the support of the Radicals.—The continued success of the government in its pacification of Tripoli, and the discussion of plans for government development of the new acquisition and for the diversion thither of the streams of emigrants now directed toward America, made the Tripolitan situation a source of strength to the ministry. In the fiscal debates of March, however, what had previously been intimated (see RECORD, for June, 1913, p. 379) was conclusively shown, namely that the favorable surplus which the government had shown in its account of the cost of the Tripolitan war and its sequel had been obtained by manipulation of the figures and that a considerable **deficit** in reality existed. The Radicals thereupon withdrew their support from the government and thereupon M. Giolitti, the prime minister, resigned. He was succeeded by M. Salandra, who succeeded in obtaining a majority, but one generally regarded as unstable and destined to early collapse.—The continued failure of the pope to convene a consistory for the **nomination of cardinals** was taken as renewed evidence of his intention to fill the existing vacancies with non-Italians, and of an unwillingness to face the inevitable opposition, both from Quirinal and the Italian groups within the church, to a further reduction of the slender Italian majority in the College of Cardinals.—Resistance to the Italian occupation of Libya persisted, but a victory at Maharuga by the Italian forces opened a clear route to Fezza.

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RUSSIA.—The resignation in February of Prime Minister Kokovtzoff, following severe criticism in the Duma and in the Council of the Empire of the policy of encouraging the consumption of vodka in order to increase the revenues, was believed by some to mark the abandonment of that policy and a reform of the entire fiscal system. Others regarded it merely as an indication that the premier had not been found sufficiently amenable to the reactionary policy of the emperor's advisors. M. Goremykin, a former prime minister, was again called to the post, with the understanding, it was alleged, that he was to be replaced by M. Krivoshein, minister of agriculture, when the latter's health should permit.—A bill for the regulation of the **liquor traffic** was introduced by the government. M. Bark, the new minister of finance, announced that he would close the dram shops in all towns in which the population desired such action.—The hopes of the reactionaries in the Council of the Empire for a reduction of the Duma to a merely consultative function were destroyed by an imperial rescript in March.—A "Department of Physical Culture" to improve the **national health** by the encouragement of hygienic living and of sports was established.—In April was enacted a law giving to all **married women**, but especially to those living apart from their husbands, large property and contractual rights.—The acquittal in November of Mendel Beiliss, a Jew accused of murder for ritual purposes, was not followed, as had been feared, by outbreaks of anti-Semitic feeling, the government having made plain its lack of sympathy with violent methods in the existing situation.—The persistence of the government in its policy of **military expansion** (see also *supra*, p. 350) and its excellent financial condition were indicated in the introduction, on March 12, of estimates for extraordinary expenses of the army, totaling $60,000,000, an increase of thirty per cent over the budget for 1913. The ordinary military budget was for $250,000,000.—The agitation in **Finland**, following the arrest by the government of two magistrates (see last RECORD, p. 742) was temporarily checked in December by the action of the military commander at Helsingfors in expelling from the town, without legal warrant, the editors of three papers.

THE BALKAN STATES.—The whole field of the recent wars was the scene, during the winter, of extreme **misery**, which none of the governments concerned either would or could do much to relieve.—The prolonged stay of King Ferdinand of **Bulgaria** at Vienna was taken advantage of by certain of his opponents to circulate plausible rumors of his abdication. In December, however, he returned to Sofia. There was no hostile demonstration in spite of previous threats of violence. Elections for the Sobranye were conducted in December under conditions of unprecedented freedom from interference by the government, over 100,000 men voting who had never before participated in elections. The Russophil party was utterly crushed, while the Agrarians and Socialists made heavy gains, putting the government party in the minority. Neither of these two groups would, however, enter into any combination, and difficulty was

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therefore experienced in the formation of a cabinet. The cabinet shortly found itself unable to secure agreement as to financial policy, and a dissolution and new election were ordered, as a result. The Socialist party lost heavily, but the government was still without a stable majority.—The successful intervention of Minister Jonescu in the Greco-Turkish friction of November still further increased the prestige of the Bulgarian ministry. A large increase in the navy was decided on. On January 12, however, the majority of the government was wiped out by the defection to the Liberals of one wing of the government (Conservative) party which had long viewed with increasing favor the policy of the subdivision of large estates, the chief plank of the Liberal platform. A Liberal ministry headed by Jean Bratiano was formed.—On December 7, the Servian government promulgated a so-called **New Servian Constitution** for all the territory recently annexed. This was however little more than an administrative code of bureaucratic character.—The government of **Greece** entered upon a policy of military and naval expansion, involving the immediate authorization of three dreadnoughts and a number of smaller vessels. On December 19, in accordance with the Treaty of London (see last RECORD, p. 706), Crete again became part of Greek territory. The growing prestige of the Venezalos ministry, in stimulating the national industry, was impaired by the unprotesting acceptance by it of the delineation of the Greco-Albanian boundary by the International Commission (see p. 349, *supra*). In March the government took an unprecedented step in prohibiting a Labor party demonstration against the government's ostensible abandonment of the Epirotes.

TURKEY.—The determination of the Committee on Union and Progress to improve the military and naval position of the government was evinced by the appointment, in December, of several **German army officers** of high rank, headed by General Liman von Sanders, to positions of prime importance in the actual command of the army, by the assumption of the war portfolio by Enver Bey, by the award to an English firm of a thirty-year contract to operate all the government navy yards, and by the purchase of a new **dreadnought** from Brazil.—The **funds** for these expenditures, and indeed for the daily expenses of the government, were still unavailable, however, the negotiations for the French loan of £14,000,000 being protracted longer than had been anticipated. In the meantime, the government was compelled to pay nominally twelve per cent, but in reality fifteen per cent, for a short-time loan of £4,000,000.—Nevertheless, the elections in March resulted in a sweeping victory for the government. In these elections, the Christians of **Armenia** were permitted to elect sixteen representatives, pressure from the powers, and particularly from Russia, having been persistent. It was announced also that Armenia would be divided into two administrative districts, to be known as inspectorates, in which the chief officer of administration would be the subject of some minor European power; and that in each of the six vilayets a legislative assembly would be constituted in which the Christians would have a proportional representation.

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OTHER EUROPEAN STATES.—A Radical attack upon the Monarchy in **Norway**, taking the form of bills depriving the king of his right to name a successor in event of the failure of a natural heir, and of his prerogative of personally opening the Storthing, was defeated in spite of the ordinary Radical majority.—In **Sweden**, the plans for strengthening the national defense, evoked by the growing fear of Russian aggression, produced a large demonstration of the peasants in their favor and a counter demonstration by the Labor party, which demanded gradual disarmament. After several unsuccessful attempts to form a stable ministry upon the question, the Riksdag was dissolved and a general election ordered. The emphatic position assumed by King Gustav, without consulting his ministers, in favor of increased armament, and his apparent determination to abide by this position, whatever the outcome of the elections, revived republican agitation.

VI. ASIA AND AFRICA

JAPAN.—In spite of its promises of a program of retrenchment, the Yamamoto ministry submitted in February **naval estimates** calling for the unprecedented total of $77,000,000. Coming at the same time with disclosures of wide-spread **corruption** in the purchase of supplies for the navy, these estimates met with indignant popular opposition which expressed itself in riots and **mob demonstrations** of a most violent character. Though the government succeeded in defeating a vote of censure in the Diet, the personal influence of Admiral Yamamoto could not prevent the Peers from cutting down by $20,000,000 the estimates which had already been reduced $15,000,000 by the Diet, and the cabinet was obliged to resign. As it was recognized that after Yamamoto's defeat, no other member of the Satsuma Clan could be chosen premier, while the choice of any member of the Chosu Clan would in the existing state of popular feeling be even more futile, the fall of the cabinet was hailed as a body blow at the system of government by those two clans, which had obtained for almost half a century. Great difficulty was experienced by the emperor in finding anyone who could successfully assume the premiership, but in the middle of April, Count Okuma, who despite his great age was regarded as one of the most progressive statesmen available, consented to form a cabinet.—The almost total failure of the rice crops and fisheries in the northwest, and the destruction of the island of Sakurashima by a volcanic eruption aggravated the conditions of **poverty** which made so difficult the fiscal problem of the government, and so intense the popular opposition to any increase in the burden of armaments.

CHINA.—The expulsion of the members of the Kuo Ming Tang party from the House of Representatives (see last RECORD, p. 751) left the House without a quorum, and Yuan accordingly ordered the **suspension of Parliament** and in January dissolved it. In its place he formed, by appointment, an "administrative conference" of seventy-one members. On April 2 he

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submitted to a "constitutional convention" summoned by him a **new constitution** by which virtually dictatorial powers were vested in the president. On April 31 the constitution was promulgated, and Yuan thus obtained an ostensibly legal authorization to continue his absolute rule.—The **finances** of the government grew more satisfactory, its credit having greatly improved and the restoration of order in the southeast having resulted in a heavy increase of custom duties. The salt tax also yielded far beyond what had been anticipated.—The almost complete subsidence of the revolt in the southern provinces, moreover, reduced the demands upon the treasury. On the other hand, extensive movements of troops in the northwest were necessary to suppress **bandit armies**, especially a large one headed by "White Wolf" which committed enormous depredations and incredible outrages. The watchful censorship exercised by the Pekin government, as well as the false reports transmitted by the mandarins of the provinces affected, made difficult any accurate estimate of the seriousness of the situation.

PERSIA.—The progress of events continued to be dominated by **Russian influence**. A conference of notables and mullahs, held in November, to set a date for the assembly of the Mejliss, was adjourned *sine die* because of Russian opposition. In March it became apparent that the **financial extremities** of the government would soon make necessary another loan, which, it was anticipated, would be permitted by Russia only in return for the authorization of an increase in the Cossack Brigade in the Northern Zone.

AFRICA.—The death of Menelik, King of **Abysinnia**, was officially announced in December.—In November was held the first election for the new unicameral Legislative Assembly of **Egypt** (see last RECORD, p. 752) under the widely extended suffrage provided for by the new law. As had been expected, little interest in the election was evinced by the newly enfranchised portion of the electorate. Disagreement with the new chamber caused the resignation of Said Pasha, premier for four years. He was succeeded by Hussein Pasha.—The suppression of the slave trade in **Morocco**, through the intervention of the French and English governments, was urged by persons of great influence, and action in the near future seemed likely.

[For colonies and dependencies in Africa and Asia, see the United States, the British Empire and Continental European states, *supra*.]

E. M. SAIT,
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